RECORD, CASE No. 15,402.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1018.

AH CHING, APPELLANT,

vs.

THE UNITED STATES AND GEORGE E. GARD, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1893.

1 United States District Court, Northern District of California.

In the Matter of the Application of AH CHING for a Writ of *Habeas Corpus*. No. 10740.

To the honorable the district court of the United States in and for the northern district of California, ninth circuit:

And now comes Ah Ching and makes this his petition and complaint to this honorable court, and respectfully shows:

I. That your petitioner is a person of the Chinese race, born in China, and not a naturalized citizen of the United States, and that at all the times hereinafter mentioned, and more especially at the time of the passage of the act of Congress approved May 5th, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," he was, always has been and still is entitled to remain in the United States, in that he was within the United States at the time of the passage of the act of Congress approved May 6th, 1882, and entitled "An act to execute certain treaty stipulations relating to Chinese," and has never thereafter and up to the time of making this his petition been without the United States, and that he now resides, and has resided for more than one year last past, in the county of Los Angeles, in the southern district of California.

II. That your petitioner on the 17th day of November, 1880, the day the treaty between the United States and China concerning immigration was concluded and signed, was within the United States, and was under the terms of said treaty accorded all the rights, privileges, immunities and exemptions which were then accorded to the citizens and subjects of the most favored nation, and prior to said last-named day, and in or about the month of July, 1879, had come to the United States with the intention of remaining and taking up his permanent residence therein, and with no definite intention of returning to China, and at the time of said treaty had become and has ever since been a permanent resident of the United States under and in pursuance of the invitation extended to him and at that time to all other Chinamen under the provisions of the fifth and sixth articles of the additional articles to the treaty between the United States of America and the Ta Tsing empire of the 18th of June, 1858, concluded and signed on the 28th day of July, 1868 (Burlingame treaty), which then and there declared that the high contracting parties "cordially recognize the inherent and inalienable right of man to change his home and allegiance,
2 and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or of permanent residents," and further declared that "Chinese subjects * * * residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to * * * residence as may be there enjoyed by the citizens or subjects of the most favored nation."

III. That heretofore, to wit, on the 3rd day of Sept., 1893, one Isaac N. Wilson presented to the Honorable E. M. Ross, United States district judge in and for the southern district of California, a complaint verified by him, which charged that your petitioner was a Chinese laborer residing within the southern district of California, and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and that your petitioner was then and there entitled to remain in the United States, and was after one year from the passage of said act found unlawfully within the jurisdiction of the United States without the certificate of residence provided for in section 6 of said act. That thereupon the said district judge made an order directing that the said complaint be filed, and that a warrant issue, which warrant was thereafter issued and delivered to the marshal of the United States in and for the southern district of California. Copies of said complaint, order and warrant are hereto attached and made part hereof.

That afterwards, to wit, on the 4th day of September, 1893, the said United States marshal apprehended your petitioner and took him into custody and produced him before the said district judge.

IV. That the said Isaac N. Wilson, who made and presented the complaint hereinabove referred to, is not and was not at any of the times herein mentioned, a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, or in any way connected with any of the executive departments of the Government of the United States.

V. That thereafter, on the 6th day of September, 1893, your said petitioner was brought before the district court of the United States in and for the southern district of California, and testimony was introduced on behalf of the Government and on behalf of your petitioner, and the cause thereupon submitted, and on the 8th day of September, 1893, the said district court in and for the southern district of California made an order directing that your petitioner be deported from the United States to China, and remanded your petitioner to the custody of Geo. E. Gard, United States marshal in and for the southern district of California. Copies of said orders are hereto attached and made a part hereof.

VI. That your petitioner is detained and restrained of his liberty by and in the custody of George E. Gard, the marshal of the United States in and for the southern district of California, under and by color of the authority of the United States, wrongfully and unlawfully, as your petitioner is informed and verily believes, and in violation of the provisions of the Constitution of the United States, and of the laws thereof, and of the various treaties made and entered into between the United States of America and the Chinese empire.

VII. That he has not been apprehended and is not detained by virtue of any judgment, order or decree, or other judicial process of any court other than the said order of the said United States judge heretofore referred to herein, and that he is now detained by virtue of the alleged claim and authority given to the said marshal of the

United States in and for the southern district of California by and under said order made by said judge.

3 VIII. That, as your petitioner is informed and verily believes, his detention by the said United States marshal in and for the southern district of California, by and under the direction of the order of said United States judge, is without jurisdiction and void and unconstitutional, and that your petitioner is restrained of his liberty without due process of law and against his rights under the Constitution of the United States and the laws thereof and the various treaties between the United States of America and the Chinese empire, and unlawfully and without authority, under the guise and color of proceedings against him for the commission of the alleged offense against the provisions of the said 6th section of the said act of Congress of May 5th, 1892, to wit, of not having applied to the collector of internal revenue of his district for a certificate of residence and of now being without such certificate of residence, which said alleged offense is not, as this petitioner is informed and verily believes, any offense whatever, in that the whole of said 6th section of said act of Congress of May 5th, 1892, is unconstitutional, void, and of no effect.

IX. That your petitioner is informed and verily believes that his detention by the United States marshal in and for the southern district of California, as aforesaid, is without jurisdiction, and void for the reason that the said Isaac N. Wilson, who made and presented the complaint hereinabove referred to, was not at any of the times herein mentioned a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, and that the filing of said complaint and the issuance of a warrant thereon was without authority of law and in excess of the jurisdiction of the said district judge for the southern district of California, and that all proceedings thereunder were therefore illegal and void.

X. And your petitioner further says that no previous application for a writ of *habeas corpus* has been made by him to this or any other court or judge.

Wherefore your petitioner prays that this honorable court will order a writ of *habeas corpus* to be issued out of this court to said George E. Gard, the marshal of the United States in and for the southern district of California, requiring him to forthwith produce the body of your petitioner before this honorable court, and there to abide what shall be ordered by this honorable court in the premises.

And as in duty bound your petitioner will ever pray.

AH (Chinese signature) CHING.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
Attorneys for Petitioner.

CITY OF SAN FRANCISCO, } ss:
Northern District of California, }

Ah Ching, being duly sworn, deposes and says that he is the petitioner and complainant hereinbefore named; that he has heard read

and translated to him the foregoing petition and complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

AH (Chinese signature) CHING.

Subscribed and sworn to before me this 11th day of September, 1893.

[SEAL.] JNO. F. LYONS,
Notary Public in and for the City & County of San Francisco, State of California.

4 [Endorsed:] No. —. U. S. district court, northern district of California. *In re* application of Ah Ching for writ of *habeas corpus*. Petition for writ. Filed September —, 1893. —— ——, clerk, by —— ——, deputy clerk. Harvey S. Brown and Thos. D. Riordan, attorneys for petitioners.

5 UNITED STATES OF AMERICA, } ss:
Southern District of California, }

Be it remembered that on this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, before me, William M. Van Dyke, a commissioner duly appointed by the circuit court of the United States of America for the southern district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, etc., pursuant to the acts of Congress in that behalf, personally appeared Isaac N. Wilson, who, being duly sworn according to law, deposes and says that Ah Jim, being a Chinese laborer at and residing in the county of Los Angeles, State of California, within the southern district of California and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and who was then and there entitled to remain in the United States, was, after one year from the passage of said act, to wit, on the 30th day of August, A. D. 1893, found unlawfully within the jurisdiction of the United States, to wit, at the county of Los Angeles, State of California, without the certificate of residence provided for in said act.

He, the said Ah Jim, still is and was residing in said county and State and in the first collection district of California during all the time within one year after the passage of said act—

6 Contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States.

ISAAC N. WILSON.

Sworn to and subscribed this 31st day of August, 1893, before me—
WM. M. VAN DYKE,
Commissioner of U. S. Circuit Court,
Southern District of California.

Let the foregoing complaint be filed and a warrant issued.
E. M. ROSS,
District Judge.

(Endorsed:) No. 473. District court, so. dist. of California. United States of America plaintiffs, *vs.* Ah Jim. Complaint. Filed August 31st, 1893. E. H. Owen, clerk.

7 UNITED STATES OF AMERICA, } ss:
Southern District of California, }

The President of the United States of America to the marshal of the United States for the southern district of California and to his deputies or any or either of them, Greeting:

Whereas complaint on oath hath been made to me charging Ah Jim with a violation of the sixth section of the act of Congress entitled "An act to prevent the coming of Chinese persons into the United States," approved May 5, 1892:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Ah Jim and bring his body before the district court of the United States for the southern district of California on Monday, the 4th day of September, 1893, at 10.30 o'clock a. m., that he may then and there be dealt with according to law for the said offence.

Given under my hand this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the one hundred and eighteenth.

E. M. ROSS,
U. S. District Judge in and for the
Southern District of California.

Attest, etc.:
[SEAL.] E. H. OWEN, *Clerk.*

8 By virtue of the within warrant I have this day the body of Ah Jim before E. M. Ross Sept. 4th, '93.
GEO. E. GARD, *U. S. Marshal.*
W. B. GARD, *Deputy.*

(Endorsed:) No. 473. U. S. district court, southern district of California. United States of America *vs.* Ah Jim Warrant of arrest. Filed Sept. 4th, 1893. E. H. Owen, clerk.

9 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the

city of Los Angeles, on Monday, the 4th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
AH JIM. } No. 473. Sec. 6, Geary Act.

George J. Denis, Esq., U. S. attorney, appearing for the Government; defendant present in custody of the marshal. The marshal having made return on the warrant hereinbefore issued, this case is called. Now comes the U. S. attorney and presents a telegram which he had received on September 2, 1893, from the U. S. Attorney General, which telegram is read by the court, ordered filed, and a copy substituted in lieu thereof. F. J. Thomas, Esq., appears and reads a telegram from A. B. Hotchkiss, Esq., attorney for defendant, and asks that this cause be continued at A. B. Hotchkiss' request until September 6th, 1893, at 3 p. m.

By consent of the U. S. attorney it is thereupon ordered that this cause be, and the same hereby is, continued until Wednesday, September 6th, 1893, at 2.30 p. m.

10 Form No. 2.

The Western Union Telegraph Company.

21,000 offices in America. Cable service to all the world.

Thos. T. Eckert, general manager. Norvin Green, president.

Receiver's No.: —. Time filed: —. Check: —.

Send the following message subject to the terms on back hereof, which are hereby agreed to.

SEPTEMBER 2ND, 189–.

Dated Washington, D. C., —— 2nd.

To U. S. Att'y Denis, Los Angeles, Calif.:

I am advised by the Secretary of the Treasury that there are no funds to execute the Geary law so far as same provides for deportation of Chinamen who have not procured certificates of residence. On that state of facts circuit court of United States for southern district of New York made following order: "Ordered that blank be, and he hereby is, discharged from the custody of the marshal, and ordered to be deported from the United States whenever provision for such deportation shall be made by the proper authorities." Ask court to make similar order in like cases.

OLNEY, *Att'y Gen'l.*

Read the notice and agreement on back.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays, the sender of a mes-
11 sage should order it repeated—that is, telegraphed back to the originating office for comparison. For this one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of a message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance. No employee of the company is authorised to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmit-
ting offices, and if a message is sent to such office by one of
12 the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

THOS. T. ECKERT,
General Manager.
NORVIN GREEN,
President.

(Endorsed:) Nos. 468, '69, '70, '71, '72, '73. U. S. district court, southern dist. of California. Substituted copy of telegram from Attorney General. Filed Sept. 4th, 1893. E. H. Owen, clerk.

13 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city

of Los Angeles, on Wednesday, the sixth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA *vs.* AH JIM. } No. 473. Prosecution under Sec. 6 of the Geary Act.

U. S. attorney is present for the Government; defendant present in court in custody of the U. S. marshal, with counsel, A. B. Hotchkiss, F. J. Thomas, and R. A. Ling. Thereupon defendant objects to the jurisdiction of the court, which objection is overruled and defendant excepts; defendant demands a jury trial, which demand the court refuses to entertain and defendant excepts. Thereupon plaintiffs, to sustain the issue on their side, having called as witnesses W. B. Gard, W. A. Hammel, and Isaac N. Wilson, who are respectively and severally duly sworn and give their testimony, and the Government having rested, and defendant having moved to dismiss the proceedings, which motion is denied, and defendant having excepted, and it having been stipulated that I. R. Dunkelberger and Mr. Hay would testify, if sworn in this case, as in the case of U. S. *v.* Fong Louie, No. 470, and Ah Fawn having been sworn as
14 interpreter, and defendant, to sustain the issue on his side, having called as a witness the defendant, who is duly sworn, and, through the interpreter, Ah Fawn, answers that his true name is Ah Ching, which answer is ordered entered of record, and gives his testimony, and, the matter having been submitted to the court, the court announces its decision as follows:

I find from the evidence and from the defendant's personal appearance and from his language, dress, and association that defendant is a Chinaman, and from his occupation that he is a laborer, and that he was such on the 5th day of May, 1892, and was then a resident of Los Angeles county, California, and has since remained such, and that he did not register in accordance with and in pursuance of the act of Congress of May 5th, 1892; that no excuse has been shown on his part for his failure to register, and upon those facts I order that he be deported to China. Findings, order, and judgment will be prepared accordingly.

15 In the District Court of the United States, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff, *vs.* AH CHING, Defendant. } No. 473.

Findings, Order, and Judgment.

A verified complaint having been filed in this court charging Ah Jim, whose true name is Ah Ching, with a violation of the sixth section of a certain act of Congress approved May 5th, 1892,

entitled "An act to prohibit the coming of Chinese persons into the United States," and a warrant for the arrest of the said Ah Ching having been issued by me, Erskine M. Ross, United States district judge in and for the southern district of California, made returnable before the district court for the southern district of California on the 4th day of September, 1893, and the said Ah Ching having been duly apprehended upon said warrant by the United States marshal in and for the southern district of California and brought before the said court upon the 4th day of September, 1893, and thereafter, upon the 6th day of September, 1893, a hearing was thereupon had of the matters
16 charged in said complaint, the United States of America being represented by its attorney, George J. Denis, Esq., and the said Ah Ching by A. B. Hotchkiss and F. J. Thomas, Esqs., and testimony having been adduced, I, Erskine M. Ross, judge as aforesaid, from such testimony do find that said Ah Ching is by race, color, dress, and appearance a Chinese person, and is and was at the times hereinafter mentioned a laborer by occupation; that he was a resident of the State of California, to wit, of the county of Los Angeles, at the time of the passage of the act of Congress of May 5, 1892, and has since continued such resident; that said Ah Ching was, after May 5, 1893, found to be a resident within the jurisdiction of the United States and of this district without the certificate of residence provided for in the act of Congress above referred to; that the said Ah Ching has neglected, failed, and refused to comply with the provisions of said act in this, to wit, that he, the said Ah Ching, a Chinese laborer, neglected, failed, and refused to apply for and obtain the certificate of residence required by said act; that Ah Ching has not established to my satisfaction that, by reason of accident, sickness, or other unavoidable cause, he was unable to procure such certificate; that said Ah Ching is unlawfully within the United States:

Now, therefore, I, Erskine M. Ross, judge as aforesaid, upon the foregoing facts do hereby order that said Ah Ching be removed from the United States to China; and it is further ordered that said deportation of the said Ah Ching be made from the port of San Francisco, within the limits of the northern district of California,
17 and that he be hereby committed to the custody of the United States marshal for the southern district of California to carry out this order.

Dated at Los Angeles, this 8th day of September, A. D. 1893.

E. M. ROSS,
District Judge of the United States for the Southern District of California.

(Endorsed:) No. 473. In the district court of the United States for the southern district of California. The United States of America *vs.* Ah Ching. Findings, order, and judgment. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy.

18 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the

city of Los Angeles, on Friday, the eighth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA *vs.* AH JIM. } No. 473. Prosecution under Section 6 of the Geary Act.

Now comes F. J. Thomas, Esq., of counsel for defendant, and moves that proceedings be dismissed and defendant discharged; which motion the court declines to entertain; to which ruling defendant excepts; and thereupon defendant, by counsel, moves the court for a stay of proceedings in order that an appeal may be allowed; which motion is by the court denied; to which ruling defendant excepts.

19 In the District Court of the United States of America, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff and Respondent, *vs.* AH JIM, Defendant and Appellant. } No. 473.

The above-named defendant and appellant, conceiving himself aggrieved by the final judgment duly made and entered in the above-entitled cause on the 6th day of September, 1893, and by the order duly made and entered on the 8th day of September, 1893, doth hereby appeal from said final judgment and said order to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and all papers on which said order was made in the said cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 8th day of September, 1893.

A. B. HOTCHKISS,
FRANCIS J. THOMAS,
Attorneys for said Defendant and Appellant.

Application being made to me for the allowance of the foregoing appeal, the same is refused, there being, in my opinion, no appeal from the order of deportation.

Los Angeles, September 8th, 1893.

ROSS,
District Judge.

20 Received copy of within this 8th day of September, 1893.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) 473. In the district court of the United States of America, southern district of California. United States of America, plaintiff and respondent, *vs.* Ah Jim, defendant and appellant. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy. Francis J. Thomas, 22 Temple block, Los Angeles, Cal., attorney-at-law.

21 In the District Court of the United States of America in and for the Southern District of California.

THE UNITED STATES OF AMERICA
vs.
AH CHING. } No. 473.

I, E. H. Owen, clerk of the district court of the United States of America in and for the southern district of California, do hereby certify the foregoing 16 pages, numbered from 1 to 16, inclusive, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled matter.

Attest my hand and the seal of said district court of the United States for the southern district of California this
[SEAL.] 9th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

E. H. OWEN,
Clerk of the United States District Court for the Southern District of California,
By WM. M. VAN DYKE,
Deputy Clerk.

(Endorsed:) No. 10740. U. S. district court, northern district of California. In the matter of the application of Ah Ching for a writ of *habeas corpus*. Petition for writ. Filed September 11th, 1893. Southard Hoffman, clerk. Harvey S. Brown and
22 Thomas D. Riordan, attorney for petitioner, 6 Montgomery avenue, San Francisco.

23 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 11th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable William W. Morrow, judge.

In the Matter of the Application of AH CHING for a Writ of *Habeas Corpus*. No. 10740.

In this matter the application for the issuance of a writ of *habeas corpus* this day came on for hearing before the court—Harvey S. Brown, Esq., and Thomas D. Riordan, Esq., appearing as attorneys for the petitioner, and Charles A. Garter, Esq., United States attorney for the northern district of California, appearing on behalf of the United States—and, after hearing Mr. Riordan and Mr. Garter, it is by the court now here ordered that the application for the issuance of a writ of *habeas corpus*, as prayed for in the petition herein, be, and the same is hereby, denied, and that said petition be, and the same is hereby, dismissed.

24 United States District Court, Northern District of California.

In the Matter of the Application of AH CHING for a Writ of *Habeas Corpus.*

Notice of Appeal.

The petitioner in the above-entitled proceeding, feeling himself aggrieved by the order heretofore made and entered herein in the district court of the United States in and for the northern district of California on the 11th day of September, 1893, declining to grant a writ of *habeas corpus* as prayed for in the petition herein and dismissing the petition, doth hereby appeal from the said order of said district court to the Supreme Court of the United States, and he prays that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

San Francisco, September 11th, 1893.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
Attorneys for the Petitioner and Appellant.

Due service of a copy of the within is hereby admitted this 11th day of Sept., 1893.

CHAS. A. GARTER,
U. S. Attorney for North. Dist. of Cal.

(Endorsed:) Filed September 11th, 1893. Southard Hoffman, clerk.

25 In the Supreme Court of the United States.

In the Matter of the Application of AH CHING for a Writ of *Habeas Corpus.*

AH CHING, Appellant and Plaintiff in Error,
vs.
THE UNITED STATES OF AMERICA and GEORGE E. GARD, United States Marshal in and for the Southern District of California, Respondents and Defendants in Error.

Assignment of Errors.

Afterwards, to wit, on the 11th day of September, 1893, comes the said appellant and plaintiff in error, by Harvey S. Brown and Thos. D. Riordan, his attorneys, — says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the district court of the United States in and for the northern district of California erred in declining to grant the appli-

cation for a writ of *habeas corpus* and dismissing the petition filed herein, because the sixth section of the act of Congress ap-
26 proved on the 5th day of May, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," etc., and each and every part thereof is unconstitutional and void and of no effect.

Second. That the said district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, because the presentation to and filing of a complaint with the Hon. E. M. Ross, United States district judge in and for the southern district of California, and the issuance of a warrant thereon was in excess of the jurisdiction of said judge, and therefore all proceedings had thereafter were illegal, void, and of no effect.

Third. That the district court of the United States in and for the northern district of California erred in declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, because the respondents in error had no warrant or authority of the law to confine or imprison the petitioner nor to detain him in custody.

Fourth. That the district court of the United States in and for the northern district of California erred in not issuing the writ of *habeas corpus* prayed for in the said petition and thereafter discharg-
27 ing said petitioner upon the facts set forth in the said petition.

Wherefore the said petitioner prays that the order of the district court in and for the northern district of California, entered on the 11th day of September, 1893, declining to grant the application for the writ of *habeas corpus* and dismissing the petition filed therein, be reversed, and that the district court of the United States be ordered to enter an order granting a writ of *habeas corpus* as prayed for in said petition.

——— ———,
——— ———,
Att'ys for Appellant and Plaintiff in Error.

Due service of a copy of the within is hereby admitted this 11th day of Sept., 1893.

CHAS. A. GARTER,
U. S. Attorney for North. Dist. of Cal.

(Endorsed:) Filed Sept. 11th, 1893. Southard Hoffman, clerk.

28 UNITED STATES OF AMERICA, }
Northern District of California, } ss:

I, Southard Hoffman, clerk of the district court of the United States in and for the northern district of California, in the ninth judicial circuit, do hereby certify that the foregoing pages, numbered from 1 to twenty-seven (27), inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of Ah Ching for a writ of *habeas corpus*, as the same remain of record on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of San Francisco, in the northern district of California, in the ninth circuit, this 13th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

Seal of the U. S. District Court, Northern Dist. of California.

SOUTHARD HOFFMAN, *Clerk.*

Endorsed on cover: Case No. 15,402. N. California D. C. U. S. Term No., 1018. Ah Ching, appellant, *vs.* The United States and George E. Gard, United States marshal for the southern district of California. Filed September 22d, 1893.

154 U.S. [illegible]

TRANSCRIPT OF [illegible]

UNITED STATES CIRCUIT COURT OF [illegible]
For the Fifth Circuit November Term, [illegible]
No. 128.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another. } No. [illegible]

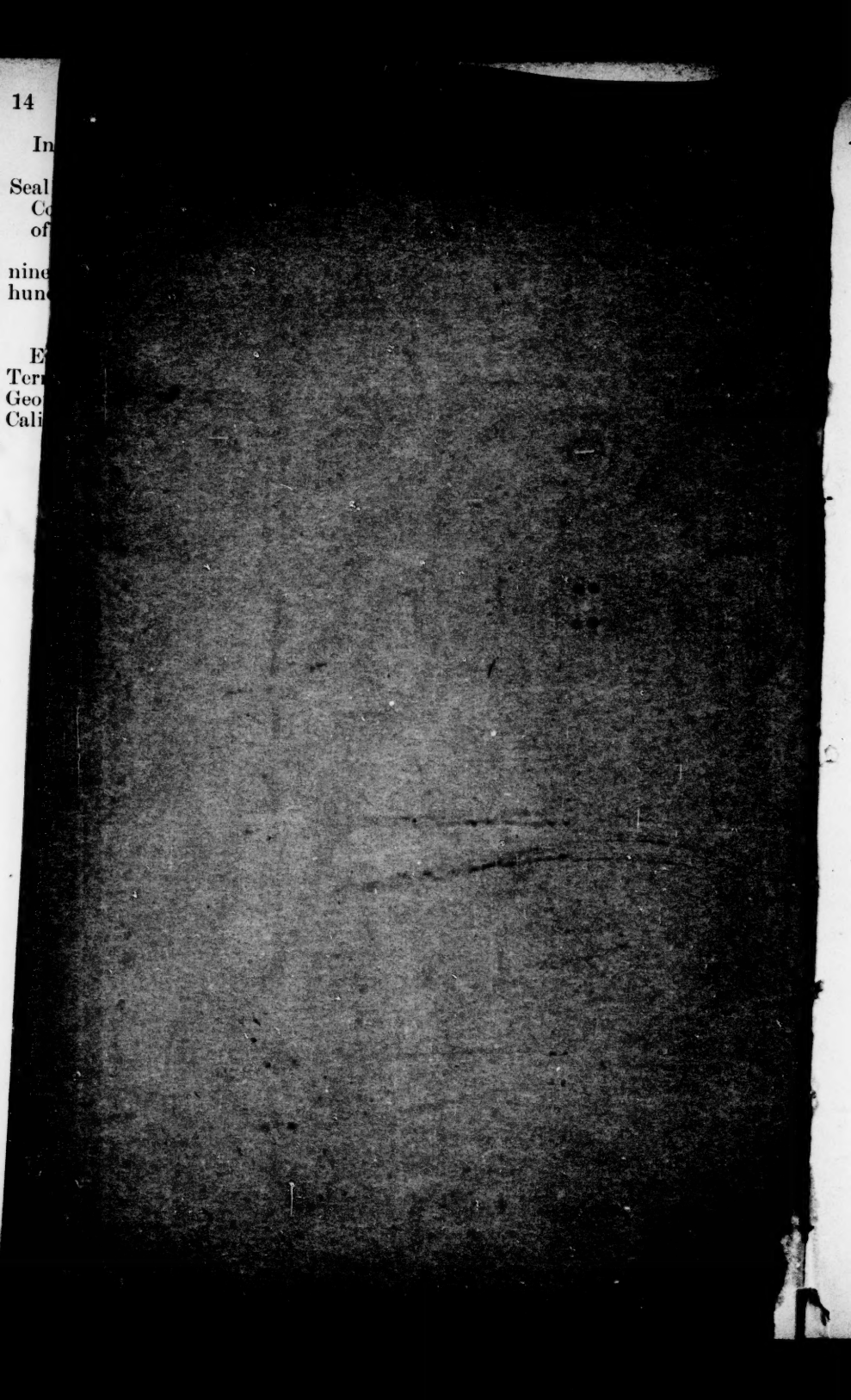
In re. Intervening Petition of Anniston Loan [illegible] Company

ALABAMA IRON & RAILWAY COMPANY, [illegible] COAL & COKE COMPANY, [illegible]
TRUSTEE, AND JAMES G. [illegible], Trustee,
Appellants,
vs.
ANNISTON LOAN & TRUST COMPANY,
Appellee.

Appeal from Circuit Court of the United States for the Northern District of Alabama, [illegible] Division. In Equity.

Filed [illegible] 1894.

[illegible]



In the Circuit Court of the United States

For the Northern District of Alabama, Northern Division.
In Equity. No. 150.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Co. and another.

In re. Intervention of Anniston Loan and Trust Company.

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In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company. } No. 150.

In re. Intervention of the Anniston Loan and Trust Company:

This agreement witnesseth:

It is admitted by solicitors for intervenor and respondents in this cause, that at foreclosure sale under decree of foreclosure entered in the principal cause No. 150, conducted by D. D. Shelby, special master, in pursuance of said decree, that the property described in the final decree made in this intervention in favor of intervenor was purchased by Napoleon Hill, trustee, and by James C. Neely, trustee. That the part of said property purchased by Napoleon Hill, trustee, was conveyed by him to the Alabama Iron and Railway Company; and that the part of said property purchased by James C. Neely was conveyed by him to the Townley Coal and Coke Company. That the Alabama Iron and Railway Company entered into possession of the lands and property so purchased by it; and that the Townley Coal and Coke Company entered into possession of the lands and property so purchased by it. That said Alabama Iron and Railway Company and said Townley Coal and Coke Company are corporations of Alabama, duly organized under the laws of Alabama by the parties for whom said Napoleon Hill and James C. Neely purchased said properties; and the capital stock of said corporations is owned by respondents.

16 Feb., 1893.

JOHN B. KNOX,
Solicitor for Intervenor.
HENRY B. TOMPKINS,
Solicitor for Appellant.

Filed in clerk's office February 20, 1893.

N. W. TRIMBLE, Clerk.

ORIGINAL PETITION.

In the Circuit Court of the United States for the Northern District and Division of Alabama.
In Equity. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

To the Honorable Don A. Pardee, judge of the circuit court of the United States for the northern district and division of Alabama:

Your petitioner, the Anniston Loan and Trust Company, a body corporate under the laws of Alabama, respectfully petitions your honor for permission to intervene in the foregoing and above-entitled cause, and to file the petition submitted herewith as an intervention in said cause; and petitioner hereby refers to the facts set forth in said petition, and makes the same a part hereof.

Respectfully submitted.

THE ANNISTON LOAN AND TRUST COMPANY,
By Knox & Bowie, Solicitors for Petitioner.

In the Circuit Court of the United States for the Northern District and Division of Alabama.
In Equity. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

Petition and Intervention of the Anniston Loan and Trust Company:

To the Hon. Don A. Pardee, judge of the circuit court of the United States for the northern district and division of Alabama:

I. Your petitioner, the Anniston Loan and Trust Company, a body corporate under the laws of Alabama, respectfully represents unto your honor, that on, to-wit, the 11th of July, A. D. 1889, a decree was rendered by your honor authorizing and empowering Jacob G. Chamberlain, receiver of the Sheffield and Birmingham Coal, Iron and Railway Co., to issue receiver's certificates or debentures in the sum of one hundred and fifty thousand dollars, bearing a rate of interest not exceeding 7 per cent. per annum, and constituting such certificates, when issued, a first lien on all the property in the hands of the receiver, and described in the mortgages or trust deeds made by the said Sheffield and Birmingham Coal, Iron and Railway Company to complainant, as set forth in the deed of trust or mortgage of January 2, 1888, and the deed of trust or mortgage of June 1, 1888, copies of which are respectively attached as "Exhibits A" and "B" to the original bill of complaint in this cause (except the line of railroad formerly known as the Sheffield and Birmingham Railroad), all of which more fully and at large appears in and by the records of this court in this cause, and said decree to which reference is hereby made as though the same was herein particularly set out at length.

II. That said Jacob G. Chamberlain, receiver as aforesaid, acting under and by virtue of the authority vasted in him by said decree, engaged one Chas. D. Woodson, president of the First National Bank of Sheffield, Alabama, to act as his agent to negotiate the sale of 8 of said certificates, to-wit, Nos. 1, 2, 3, 8, 9, 10, 11 and 12, respectively, of the par value each of five thousand dollars, bearing 6 per cent. interest, payable at the National Park Bank, New York City, on or before three years after date the said certificates 1, 2 and 3 being dated September 19, 1889, and the said certificates Nos. 8, 9, 10, 11 and 12 being dated, to-wit, the 10th day of October, 1889, with interest payable semi-annually, and said certificates 8, 9, 10, 11 and 12 were duly placed in the hands of said Chas. D. Woodson to be negotiated and sold by him, with full power and authority

to act for and represent the said Jacob G. Chamberlain in the matter of the sale of said certificates. That under and by virtue of said authority, and while the said certificates were in his possession and control, on, to-wit, the 10th day of October, 1889, the said Chas. D. Woodson sold the same to one Duncan T. Parker, who is now dead, at and for the sum of, to-wit, five thousand dollars for each certificate, and the said Parker thereupon paid the said Woodson the said price of the certificates, and thereupon the same were turned over and transferred to him by said Woodson.

III. That afterwards on, to-wit, the second day of November, 1889, the said Duncan T. Parker sold, transferred and delivered said certificates, Nos. 8, 9, 10, 11 and 12, for a valuable consideration, to-wit, for the sum of five thousand ($5,000) dollars each, to your petitioner, and the said certificates are now owned and held by petitioner.

IV. That it is the duty of the said Jacob G. Chamberlain, receiver, to pay the semi-annual interest and the principal of said certificates out of any funds or property in his hands as such receiver; that the semi-annual interest on said certificates 8, 9, 10, 11 and 12, amounting in the aggregate to, to-wit, seven hundred and fifty dollars, ($750) due on, to-wit, the 10th day of April, A. D. 1890, at the National Park Bank, of New York City, were on that day presented at said bank for payment of the interest thereon, but such payment was refused, and petitioner since then has frequently called upon and requested the said receiver to pay the interest on said certificates, but he has wholly failed and refused to do so, though the funds in his hands are amply sufficient for the payment thereof.

V. That on the day of , 1889, the said Jacob G. Chamberlain duly reported the sale of said receiver's certificates 8, 9, 10, 11 and 12, of five thousand ($5,000) dollars each by C. D. Woodson, and at the same time reported the sale of certificates Nos. 1, 2 and 3, also of five thousand ($5,000) dollars each, to the United States circuit court for the northern division of the northern district of Alabama, and that the proceeds of said sale had been placed by said Woodson to the credit of said receiver at the First National Bank at Sheffield, Ala., less 6 per cent. commission for selling.

VI. That on, to-wit, the 3d day of December, 1889, a decree was rendered in said court foreclosing the mortgages above referred to and ordering the sale of the property embraced therein, and expressly ordering that the purchaser at said sale should be required to pay the receiver's certificates embraced in schedule "B" attached to the said decree, among which are the certificates Nos. 8, 9, 10, 11 and 12, owned and held by the petitioner, all of which more fully appears in and by said decree, to which reference is made as though herein set out at length. It was further ordered by said decree that the purchaser of said property should pay said certificates in addition to the amount bid at said sale for said property.

VII. That on January 4th said court made an order purporting to modify the former decree of December 3d, 1889, so far as to authorize the purchaser at said sale to contest the validity of said certificates Nos. 8, 9, 10, 11 and 12, sold by said C. D. Woodson, as agent for said receiver, for said D. T. Parker, as aforesaid, and purchased from said Parker by certificate. That said decree of January 4th, 1890, was made after said D. T. Parker had purchased the certificates from said C. D. Woodson, the duly authorized agent of the receiver for the sale thereof, in good faith, and for a valuable consideration, and sold them to petitioner in good faith for a like good and valuable consideration, and after said receiver had reported said sale to said court, and reported that the money paid for the purchase of said certificates was on deposit to his credit in the First National Bank of Sheffield, Alabama, and without any notice to said D. T. Parker, or petitioner, the owner of said certificates.

That on the 21st day of April, 1890, said property was sold under said decree of foreclosure, and a part of the same was purchased by Napoleon Hill, trustee, for certain parties, for three hundred and fifty thousand ($350,000) dollars, and a certain other part of said property was sold to James C. Nealy, trustee, for other parties, for one hundred and fifteen ($115,000) dollars, which said sale was duly reported to said court and confirmed on May 10th, 1890, subject to all the liens created upon said property by the receiver under the order of the said court, and required by the previous or subsequent orders of said court to be paid by said purchaser, all of which

more fully appears from the report of sale made by the special master, D. D. Shelby, in said case, and the decree entered in said cause by said court and on file in said court, to which reference is here made.

VIII. That the bondholders under said mortgage are very numerous and unknown to your petitioner, and it is not practicable to make them parties to this intervention.

The premises considered, the petitioner prays that such notice of this petition be given to the Central Trust Company of New York, Jacob G. Chamberlain, receiver, the Sheffield and Birmingham Coal, Iron and Railway Company, Napoleon Hill, trustee, and James C. Neely, trustee, as your honor shall prescribe, and that said above named persons and corporaties be made parties defendant to this intervention according to the rules and practice of this court, and required to plead, answer or demur to the same within such time as the court may prescribe, and that a decree may be rendered requiring the said receiver's certificates, numbers eight (8), nine (9), ten (10), eleven (11) and twelve (12), to be paid out of any funds or property in the hands or control of such receiver, and that the amount due petitioner upon said receiver's certificates, with the interest thereon, be declared a lien upon said property mentioned in the decree of foreclosure of December 3rd, 1889, and that said property be sold for the satisfaction and payment of said certificates, if the same be not paid, with the interest thereon, within such time as your honor may prescribe.

And if in anything petitioner is mistaken in its prayer for relief, it prays for all such other, further and different relief as in equity and good conscience may be deemed meet and proper, and petitioner will ever pray, etc.

[Signed] THE ANNISTON LOAN AND TRUST COMPANY,
By KNOX & BOWIE, its Solicitors.

State of Alabama,)
Calhoun County.)

Before me, A. D. Smith, a notary public in and for said county and State, personally appeared O. H. Parker, who being duly sworn, deposes and says, that he is president of the Anniston Loan and Trust Company, a body corporate

under the laws of Alabama, and that the facts stated in the foregoing petition are true.

[Signed] O. N. PARKER.

Sworn to and subscribed before me this June 26, 1890.

S eal] A. D. SMITH, Notary Public.

On reading and considering the foregoing petition of intervention, it is ordered that leave be granted to file the same in the suit of the Central Trust Company of New York vs. The Sheffield and Birmingham Coal, Iron and Railway Company et al., pending in the circuit court of the United States for the northern division, northern district of Alabama; and that upon the filing of the same, all the parties defendant named therein do enter their appearance in accordance with this order, then subpoena may issue to the parties respectively and be served by the marshal of the district in which they respectively reside.

DON A. PARDEE,
June 27th, 1890. Circuit Judge.

Endorsed: Filed in clerk's office this 15th day of August, A. D. 1890. A. W. MCCULLOUGH, Clerk.

AMENDMENT TO ABOVE PETITION.

In the Circuit Court of the United States for the Northern District and Division of Alabama.
In Equity, at Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

Petition and Intervention of the Anniston Loan and Trust Company:

And now comes the Anniston Loan and Trust Company and by leave of the court first obtained, amends its petition and intervention in the above entitled cause by adding thereto the following foot note:

Foot Note: The respondents are required to answer the allegations contained in the original petition and intervention

in this case and contained in paragraphs from one (1) to eight (8) inclusive, but an answer on oath is waived.

KNOX & BOWIE, Solrs. for Petitioners.

Endorsed: Filed in clerk's office Sept. 3rd, 1890.

A. W. MCCULLOUGH, Clerk.

Service acknowledged and copies waived of the within intervention and the amendment thereto, and subpoenas waived. Answer to be filed by rules day of November, 1890. This 18 September, 1890.

HENRY B. TOMPKINS,
Solicitor for Defendants.

DEMURRER.

In the Circuit Court of the United States, Northern District of Alabama, Northern Division.
In Equity.

Central Trust Company of New York,
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

Petition and Intervention of Anniston Loan and Trust Co.
vs.

(1) Central Trust Company of New York.
(2) J. G. Chamberlain, Receiver.
(3) Sheffield and Birmingham Coal, Iron and Ry. Co.
(4) Napoleon Hill, Trustee.
(5. James C. Neely, Trustee.

Demurrer of the above named defendants to the petition and intervention of the Anniston Loan and Trust Company:

These five defendants, by protestation, and not confessing or acknowledging any or all of the matters or things in said intervention contained to be true in such manner and form as the same are therein set forth and allege, doth demur to said petition and intervention, and for causes of demurrer showeth:

First. That it appeareth by the petition and intervention that said Anniston Loan and Trust Company is not entitled to the relief prayed for against these defendants, or either of of them.

Second. That it appears from said petition and intervention that there is a misjoiner of the parties, and that neither said Central Trust Company of New York nor said J. G. Chamberlain, receiver, is in anywise interested in said ligigation, or properly a party thereto.

Third. That it appears that said petition and intervention being in the nature of a bill in equity, it is not properly framed or directed to the judge of the circuit court of the United States, as provided in equity rule twenty.

Fourth. It appears by said petition and intervention that said receiver's certificates therein referred to, three of them for $5,000 each, dated September 19, 1889, and three for $5,000 each, being dated 10 October, 1889, and not due until three years after the date thereof, respectively, and that petitioner claiming to own and hold five of said receiver's certificates for $5,000 each, dated 10th October, 1889, has no right to sue for or recover the principal, or any part thereof, of said certificates, the same not having become due.

Fifth. Because it appears that petitioner has no right whatever to any suit or action upon said five receiver's certificates, numbered respectively 8. 9, 10, 11 and 12, dated 10th October, 1889, except for past due interest thereon.

Sixth. Because it appears from said petition and intervenof the Anniston Loan and Trust Company, and by proceedings and records in the cause of the Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company, to which reference is made as if the same were particularly set out at length in said petition and intervention, that said receiver's certificates were issued only upon the property, including the furnaces, coal lands, coal mines and coke ovens, and that said certificates were not issued upon or made a lein on any line of railway; and that therefore said certificates were issued illegally and without authority in law or equity, and are in no sense a lien upon the properties referred to in said petition and intervention prior in right or superior to said two mortgages referred to in said petition and intervention.

Seventh. That it appears from said records and proceedings in said cause of the Central Trust Company of New York

vs. Sheffield and Birmingham Coal Iron and Railway Company and another, which are particularly referred to in said petition and intervention, that at the time of the order, to-wit, on the 11th day of July, 1889, authorizing said J. G. Chamberlain, as receiver, to issue said receiver's certificates, that said receiver did not have under his custody or control any line or lines of railway that he was operating or managing, and that said certificates were not issued in an action then pending for the foreclosure of a railway mortgage or mortgages, and that said certificates were so illegally and improvidently issued, and constituted no lien upon said properties referred to in said petition and intervention of the Anniston Loan and Trust Company.

Eighth. That it appears that there is no copy or copies of said five receiver's certificates attached to the petition and intervention of said Anniston Loan and Trust Company, nor is there any offer to produce the originals of said certificates at the hearing.

Ninth. That it appears by said petition and intervention and the record and proceedings in this honorable court, therein referred to and made a part of said petition and intervention, that the order and decree of this court of 4th January, 1890, modifying the decree of foreclosure and sale of 3d December, 1889, together with the petition, allegations and proof upon which said order and decree of 4th January, 1890, was made, are true and undisputed; and under these facts the Anniston Loan and Trust Company are not entitled in law or in equity th set up said five receiver's certificates, or to recover anything from any person or corporation upon the same, or enforce any lien therefor.

Wherefor, and for divers other causes of demurrer appearing in said petition and intervention of the Anniston Loan and Trust Company, these defendants doth demur thereto; and they pray the judgment of this honorable court whether they or either of them shall be compelled to make answer to said petition and intervention; and they hereby pray to be henced dismissed with their reasonable costs in this behalf sustained.

HENRY B. TOMPKINS,
Solicitor for Defendants.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

HENRY B. TOMPKINS,
Sol. for Defendants.

State of Alabama, }
County of Colbert. }

J. G. Chamberlain, of said State and county, being duly sworn, deposes and says: I am one of the above named defendants in the petition and intervention of the Anniston Loan and Trust Company against the Central Trust of New York and others, and I swear that the foregoing demurrers are not interposed for delay. J. G. CHAMBERLAIN.

Sworn to and subscribed before me this 29th day of September, 1890.

(Seal.) R. H. WILHOYTE, Notary Public.

Endorsed: Filed in clerk's office Sept. 30th, 1890.
A. W. MCCULLOUGH, Clerk.

AGREEMENT AS TO HEARING ARGUMENT UPON DEMURRER.

In Circuit Court of United States for Northern District of Northern Division of Alabama.

Central Trust Co. of New York
vs.
Sheffield and Birmingham C., I. and Ry. Co. and another.

In re. Intervention of Anniston Loan and Trust Company:

It is agreed between counsel that an order may be made by the court at its present October term, 1890, setting down for argument the demurrers of defendants to said intervention, before Judge Don A. Pardee on Thursday, 6 Nov., 1890, or such other day as shall be suitable to Judge Pardee.

This 25 Oct., 1890.

JNO. B. KNOX,
Sol. for Anniston L. & T. Co.
HENRY B. TOMPKINS,
Sol. for Defts.

ORDER OF COURT.

In the Circuit Court of the United States, Northern District and Division of Alabama.
In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Ry. Company.

In re. Petition and Intervention of the Anniston Loan and Trust Company:

It appearing to the court that an agreement has been entered into between counsel in the above stated intervention, that an order may by made by this court at its present October term, 1890, setting down for argument the demurrers of the defendants to said intervention of the Anniston Loan and Trust Company, to be heard before the Hon. Don A. Pardee on Thursday, the 6th day of November, 1890, or thereafter at such other date and time as shall be suitable to Judge Pardee.

It is therefore, upon consideration, ordered, adjuged and decreed that the above stated agreement of counsel be made the order of this court, and that a hearing be had before Judge Pardee, as hereinbefore stated, in vacation, in New Orleans, or elsewhere, as said judge shall indicate.

It is further ordered that all proceedings had before Judge Pardee and all orders taken thereunder shall be considered as if taken in term time.

This in open court the first day of November, 1890.

JOHN BRUCE, Judge.

Endorsed: Filed in open court Nov. 1st, 1890.

A. W. MCCULLOUGH, Clerk.

AMENDED PETITION.

In the Circuit Court of the United States for the Northern District and Division of Alabama.
In Equity. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

Petition and Intervention of the Anniston Loan and Trust Company:

The Anniston Loan and Trust Company, a body corporate under the laws of the State of Alabama, by leave of the court first had and obtained, files the following amended petition to the above entitled cause:

To the honorable judges of the circuit court of the United States for the northern district of Alabama:

Your petitioner, the Anniston Loan and Trust Company, a body corporate under the laws of the State of Alabama, and a citizen of the State of Alabama, brings this petition and intervention against the Central Trust Company of New York, a body corporate under the laws of the State of New York and a citizen of said State of New York; Jacob G. Chamberlain, a citizen of the State of Alabama, receiver of the Sheffield and Birmingham Coal, Iron and Railway Company, a body corporate under the laws of the State of Alabama, and a citizen of Alabama; Napoleon Hill, trustee, a citizen of the State of Tennessee; James C. Neely, trustee, and a citizen of State of Tennessee; and the Sheffield and Birmingham Coal, Iron and Railway Company, a body corporate under the laws of the State of Alabama, and a citizen of the State of Alabama; and thereupon your petitioner complains and says:

1. Your petitioner, the Anniston Loan and Trust Company, a body corporate under the laws of the State of Alabama, respectfully represents unto your honors that on, to-wit, the 11th day of July, A. D. 1889, a decree was rendered by your honors authorizing and empowering Jacob G. Chamberlain, receiver of the Sheffield and Birmingham Coal, Iron and Railway Company, to issue receiver's certificates or debentures in a sum not exceeding one hundred and fifty thousand dollars, bearing a rate of interest not exceeding seven per cent. per annum, and constituting such certificates, when issued, a first lien on all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway

Company, as set forth and described in two mortgages or deeds of trust, the first executed on the second day of January, 1888, and the second mortgage executed on the first day of June, A. D. 1888, together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company of every nature and description wheresoever situated, and also a lien upon whatever residue of the earnings, incomes and profits of said property that there may be, which have accrued since the appointment of the receiver, and after deducting operating expenses of the receivership, said decree and said certificates further providing that said lien should be prior to all other liens of any kind whatsoever against said property. The said second mortgage, executed June 1st, 1888, as aforesaid, although formally a lien upon a railroad known as the Sheffield and Birmingham Railroad, was not a lien on said railroad when said certificates were issued, copies of which said mortgages are attached as "Exhibits A" and "B" to the original bill of complaint in the above entitled cause, to all of which reference is hereby made, and all of which more fully and at length appear in and by said decree of this court in said cause, and to which reference is hereby made, and the same made a part hereof as though they were herein particularly set out at length. Said receiver's certificates will be produced by the complainant on the trial of said cause.

2. That said Jacob G. Chamberlain, receiver as aforesaid, acting under and by virtue of the authority vested in him by said decree, engaged one Chas. D. Woodson, president of the First National Bank of Sheffield, Alabama, as his agent to negotiate the sale of eight of said certificates, to-wit, Nos. 1, 2, 3, 8, 9, 10, 11 and 12, respectively, of the par value each of five thousand dollars, bearing six per cent. interest, payable at the National Park Bank, New York City, three years after date, the said certificates 1, 2 and 3 being dated September 19th, 1889, and the said certificates No. 8, 9, 10, 11 and 12 being dated, to-wit, the 10th day of October, 1889, with interest payable semi-annually, and said certificates 8, 9, 10, 11 and 12 were duly placed in the hands of said Chas. D. Woodson, to be negotiated and sold by him, with full power and authority

to act for and represent the said Jacob G. Chamberlain in the matter of the sale of said certificates. That under and by virtue of said authority, and while the said certificates were in his possession and control, on, to-wit, the 10th day of October, 1889, the said Chas. D. Woodson sold the same to one Duncan T. Parker, who is now dead, at and for the sum of, to-wit, five thousand dollars for each certificate, and the said Parker thereupon paid the said Woodson the said price of the said certificates, and thereupon they were turned over and transferred to him by said Woodson.

3. That afterwards, on, to-wit, the second day of November, 1889, the said Duncan T. Parker sold, transferred and delivered said certificates Nos. 8, 9, 10, 11 and 12 for a valuable consideration, to-wit, for the sum of five thousand ($5,000) dollars each to your petitioner, and the certificates are now owned and held by petitioner.

4. That it is the duty of said Jacob G. Chamberlain, receiver, to pay the semi-annual interest and the principal of said certificates out of any funds or property in his hands as such receiver; that the semi-annual interest on said certificates 8, 9, 10, 11 and 12, amounting in the aggregate to, to-wit, seven hundred and fifty ($750.00) dollars, due on, to-wit, the 10th day of April, A. D. 1890, at the National Park Bank of New York City, were on that day presented at said bank for payment of interest thereon, but such payment was refused, and petitioner since then has frequently called upon and requested the said receiver to pay the interest on said certificates, but he has wholly failed and refused to do so, though the funds in his hands are amply sufficient for the payment thereof.

5. That on the —— day of ———, 1889, the said Jacob. G. Chamberlain duly reported the sale of said receiver's certificates 8, 9, 10, 11 and 12 of five thousand ($5,000) dollars each, by C. D. Woodson, and at the same time reported the sale of certificates Nos. 1, 2 and 3, also of five thousand ($5,000) dollars each, to the United States circuit court of the northern division of the northern district of Alabama, and that the proceeds of said sale had been placed by said Woodson to the credit of said receiver at the First National Bank at Sheffield, Alabama, less 6 per cent. commission for selling.

6. That on, to-wit, the 3d day of December, 1889, a decree was rendered in said court foreclosing the mortgage above referred to and ordering the sale of the property embraced therein, and expressly ordering that the purchaser at said sale should be required to pay the receiver's certificates embraced in Schedule B attached to the said decree, among which are the certificates Nos. 8, 9, 10, 11 and 12 owned and held by petitioner, all of which more fully appears in and by said decree, to which reference is hereby made, and the same made a part hereof, as though herein set out at length. It was further ordered by said decree that the purchaser of said property should pay said certificates in addition to the amount bid at said sale for said property.

7. That on January 4th said court made an order purporting to modify the former decree of December 3rd, 1889, so far as to authorize the purchaser at said sale to contest the validity of said certificates Nos. 8, 9, 10, 11 and 12 sold by C. D. Woodson, as agent for said receiver, for said D. T. Parker as aforesaid, and purchased from said Parker by petitioner. That said decree of January the 4th, 1890, was made after said D. T. Parker had purchased the said certificates from said C. D. Woodson, the only authorized agent of the receiver for the sale thereof, in good faith for a valuable consideration and sold them to petitioner in good faith for a like good and valuable consideration, and after said receiver had reported said sale to said court and reported that the money paid for the purchase of said certificates was on deposit to his credit in the First National Bank of Sheffield, Alabama, and without any notice to said D. T. Parker or petitioner, the owner of said certificates. That on the 21st day of April, 1890, said property was sold under said decree of foreclosure, and a part of the same was purchased by Napoleon Hill, trustee for certain parties, for three hundred and fifty thousand ($350,000) dollars, and a certain other part of said property was sold to James C. Neely, trustee for other parties, for one hundred and fifteen thousand ($115,000) dollars, which said sale was duly reported to said court and confirmed on May 10th, 1890, subject to all liens created upon said property by the receiver under the order of the said court, and required by the previous or subsequent orders of said court to be paid by said

purchaser, all of which more fully appears from the report of sale made by the special master, D. D. Shelby, in said case, and the decree entered in said cause by said court, and on file in said court, to which reference is here made, and the same made a part hereof as though it was herein particularly set out at length.

8. That the bondholders under said mortgage are very numerous and unknown to your petitioner, and it is not practicable to make them parties to this intervention.

The premises considered, the petitioner prays that such notice of this petition be given to the Central Trust Company of New York, Jacob G. Chamberlain, receiver, and the Sheffield and Birmingham Coal, Iron and Railway Company, Napoleon Hill, trustee, and James C. Neely, trustee, as your honor shall prescribe, and that said above named persons and corporations be made parties defendant to this intervention according to the rules and practice of this court, and required to plead, answer or demur to the same within such time as the court may prescribe, but answer upon oath is hereby waived; and that a decree may be rendered requiring that the accumulating interest and the principal due in the said receiver's certificates Nos. eight (8), nine (9), ten (10), eleven (11) and twelve (12) to be paid out of any funds or property in the hands or control of such receiver, and that the amount due petitioner upon said receiver's certificates, with the interest thereon, be declared a lien upon said property mentioned in the decree of foreclosure of December 3rd, 1889, and that said property be sold for the satisfaction and payment of said certificates, if the same be not paid, with the interest thereon, within such time as your honor may prescribe.

And if in anything petitioner is mistaken in its prayer for relief, it prays for all such other, further and different relief as in equity and good conscience may be deemed meet and proper, and petitioner will ever pray, etc.

KNOX & BOWIE,
Attys. for Anniston Loan & Trust Co.

Foot Note:

The respondents, The Central Trust Company of New York, Jacob G. Chamberlain, Napoleon Hill, James C. Neely, and

the Sheffield and Birmingham Coal, Iron & Railway Company, are required to answer each of the allegations of the foregoing bill numbered from one (1) to eight (8) inclusive, but answer on oath is hereby waived.

KNOX & BOWIE,
Solrs. for Anniston Loan and Trust Co.

State of Alabama,
Calhoun County.

Before me, Chas. W. Berry, a notary public in and for said county and State, personally appeared O. H. Parker, who, being duly sworn, deposes and says, that he is president of the Anniston Loan & Trust Company, a body corporate under the laws of Alabama, and that the facts stated in the foregoing petition are true.

O. N. PARKER,

Sworn to and subscribed before me this 10th day of November, A. D. 1890.

[Seal] CHAS. W. BERRY, Notary Public.

Endorsed: Filed in clerk's office November 12, 1890.
A. W. MCCULLOUGH, Clerk U. S. Cir. Court.

DEMURRER TO AMENDED PETITION.

In the Circuit Court of the United States for the Northern District and Division of Alabama. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

In re. Petition and Intervention of Anniston Loan and Trust Company
vs.
Central Trust Company of New York and others.

And now comes the defendants in the above stated petition and intervention, as they appear of record in the pleadings in this cause, and file their second and additional demurrer to the amended petition and intervention of said Anniston Loan

and Trust Company, and for cause of demurrer said defendants, by protestation and not confessing or acknowledging any or all the matters or things in said intervention contained, to be true in the manner and form as they are therein set forth and alleged, doth demur to said amended petition and intervention, and say :

Said defendants restate and reiterate each and every of the nine grounds of demurrer, except the third ground, as set forth and contained in their first demurrer to the original petition and intervention of said Anniston Loan and Trust Company, and praythe court to consider these several grounds of demurrer, as fully and particularly as if set forth in this demurrer, by referring to said first demurrer, which is made a part of this second demurrer.

Wherefore, and for divers other causes of demurrer appearing in said amended petition and intervention of the Anniston Loan and Trust Company, these defendants doth demur thereto. And they pray the judgment of this honorable court whether they or either of them shall be compelled to make answer to said petition and intervention; and they hereby pray to be hence dismissed with their reasonable costs in this behalf expended.

HENRY B. TOMPKINS,
Sol. for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

HENRY B. TOMPKINS, Sol. for Defts.

State of Georgia,)
Fulton County.)

Henry B. Tompkins, of said State and county, being duly sworn, deposes and says: I am the solicitor and agent for the above named defendants in the petition and intervention of the Anniston Loan and Trust Company vs. Central Trust Company of New York and others, and I swear that the foregoing demurrer is not interposed for delay.

HENRY B. TOMPKINS.

Sworn to and subscribed before me this 26th day of November, 1890.

JOHN M. SHELLY,
[Seal] Notary Public, Fulton Co., Ga.

Endorsed: Filed in clerk's office Dec. 2, 1890.

N. W. TRIMBLE, Clerk.

DECREE OVERRULING DEMURRERS.

Circuit Court of the United States, Northern District of Alabama, Northern Division, at Huntsville,

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

On Demurrer to the Intervention of the Anniston Loan and Trust Company:

1. The Central Trust Company of New York is the party plaintiff in the suit in which the intervention is filed, and had a direct interest when the receiver's certificates were issued. The record shows that by proceedings subsequent to the decree, the said Trust Company has no longer any interest in the validity of the receiver's certificates forming the subject of this intervention. No relief is asked against or affecting said Trust Company. It may be dismissed without prejudicing the rights or remedies of the other parties.

Jacob G. Chamberlain, the receiver, is alleged to have issued said certificates, and is charged with having in his hands funds sufficient and applicable to pay the same, and direct relief is prayed against him.

2. If it be true that the principal of the said receiver's certificates, which form the basis of this intervention, is not yet due, still the interest thereon is due, and the intervention can be maintained therefor.

3. The demurrer appears to present a proposition that, as the receiver was not in possession of, nor operating any line of railway, and as the suit pending was not for the foreclosure of any railway mortgage, there was no authority in the court to authorize the issuance of, nor in the receiver to issue, receiver's certificates which should constitute a lien on the property in possession of the court; and, particularly, a lien prior in right to the two mortgages, which were the subject of the foreclosure suit.

Counsel have submitted no argument on this proposition, nor cited any authority.

It seems to me that if the proposition is sound (which is not

granted by any means) the real defendants in this intervention, the purchasers at the foreclosure sale, are estopped from setting it up.

Receiver's certificates were issued by consent of the parties; by the same consent they were made a prior lien on the property in the possession of the court; money obtained thereon was used for the preservation and improvement of the property; and the property was sold and purchased with the clear understanding and agreement that the valid outstanding receiver's certificates constituted a prior lien which the purchasers assumed and undertook to pay.

4. It is contended that, as it is a well settled principle that a pleading is to be taken and construed against the pleader; and, that, as in this intervention, the intervenor refers to the records of the court in the case in which he intervenes; and, particularly, to a certain decree modifying the main decree in the case, that thereby he admits the facts alleged upon which the modifying decree was based.

This is the only ground upon which counsel have submitted any argument.

An examination of the record shows that the decree was modified upon the ex parte application of Chamberlain, the receiver, setting forth that the five certificates which are the basis of this intervention, had been disposed of by one Chas. D. Woodson without his authority, and that the proceeds had not come to his hands; and thereupon the decree was modified in regard to the terms of sale, as follows:

"That there be stricken from the said decree these words, 'And expressly subject to the receiver's certificates heretofore authorized to be issued by said Jacob G. Chamberlain, the receiver, to an amount not exceeding one hundred and fifty thousand dollars ($150,000.00)'; and that in the place and stead of said words, there be inserted these words, 'And expressly subject to the receiver's certificates heretofore authorized to be issued by said Jacob G. Chamberlain, the receiver, to an amount not exceeding one hundred and twenty-five thousand dollars ($125,000.00), and that the twenty-five thousand dollars of receiver's certificates disposed of by said C. D. Woodson, the same being five certificates of five

thousand dollars ($5,000.00) each, and numbered 8, 9, 10, 11 and 12, dated October 10th, 1889, and set forth in schedule B of said decree, be not included in said amount of one hundred and twenty-five thousand dollars ($125,000), but that the purchasers of said property at the sale under said decree take the same subject to the right to resist the payment of said five certificates so disposed of by said Woodson; and that the validity of said five certificates be adju licated in this court upon a proper case to be made by the parties in interest.'"

The intervention asserts that this modification of the decree was made subsequent to the time that the intervenor's rights had attached and accrued, and it was necessary and proper for the intervenor, who, under the terms of the aforesaid modified decree, was given the right to intervene in this cause, to state the basis of his right to intervene and thereby refer to the order of court made as aforesaid; but to hold that by intervening and referring to his authority therefor, he admits the truth of the statements contained in the ex parte statement of the receiver upon which the order was made, is to hold that he admits away his entire case, and this in direct opposition to the express and sworn averments of his intervention.

The case seems to turn upon the fact whether or not the proceeds of the five receiver's certificates sued upon by the intervenor came to the hands of the receiver. The decree throwing a cloud upon intervenor's rights gave him authority to intervene and assert them. It would be a vain thing to give him such right if coupled with a condition that, in order to exercise it, he must admit as truth a statement of facts which kills his case.

The purchasers of the property referred to in the intervention took the same with the express understanding that the receiver's certificates held by the intervenor had been issued under orders of the court importing a lien on the property they purchased, and were outstanding; and, further, might be presented as a valid indebtedness of the receiver. They were granted the right, and they assumed the burden, of contesting their validity. In their interest the contest was re-

stricted to this court. The intervention fairly presents the case for them to contest.

The demurrer will be sustained so far as the Central Trust Company of New York is concerned, but be overruled as to the other defendants, who will be required to answer the said intervention by the rule day in February, 1891.

December 23rd, 1890.

DON A. PARDEE, Circuit Judge.

JOHN B. KNOX, ESQ.,
Solicitor for Intervenor.

HENRY B. TOMPKINS, ESQ.,
Solicitor for Defendants.

Endorsed: Filed Dec. 26, 1890.

N. W. TRIMBLE,
Clerk U. S. Circuit Ct.

ANSWER OF DEFENDANTS TO ORIGINAL AND AMENDED PETITION.

In the Circuit Court of the United States for the Northern District and Division of Alabama, At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

In re. Petition and Intervention of the Anniston Loan and Trust Company,
vs.
Central Trust Company of New York and others, Defendants.

These defendants, by protestation, and not confessing or admitting any of the matters and things set forth in said petition, now come and make answer to said petition and amended petition, as advised by counsel, and, answering say:

I. TO THE PETITION.

First. To the first paragraph in said petition defendants admit the matters and things therein set forth.

Second. To the second paragraph of said petition defendants deny that J. G Chamberlain, receiver, ever engaged one C. W. Doodson, president of the First National Bank of Sheffield, Alabama, to act as his agent in the negotiation and sale of eight receiver's certificates 1, 2, 3, 8, 9, 10, 11 and 12, set forth in the petition of the Anniston, Loan and Trust Company, but these defendants aver that said certificates, 1, 2 and 3 were sold to the First National Bank of Sheffield, Alabama, in satisfaction and liquidation of a debt then due said bank by the Sheffield and Birmingham Coal, Iron and Railway Company. These defendants further aver that as to the other five certificates, bearing date 10th October, 1889, that said Chas. D. Woodson disposed of the same without any authority whatever from the said J. G. Chamberlain, receiver, and contrary to the direct instructions and request of said receiver. Defendants further aver that said Chas. D. Woodson did not sell or dispose of said five last named receiver's certificates on the 10th of October, 1889, to one Duncan T. Parker, or any one for him, nor were said certificates disposed of at and for the sum of five thousand dollars each ; but defendants aver that said five certificates of $5,000 each were not disposed of by said Woodson until some time after the 13th of October, 1889, and that they were then sold or otherwise disposed of by said Woodson without the authority or consent of said Chamberlain, receiver, and against the express instructions of said Chamberlain not to dispose of the same, and that said certificates were sold or disposed of to some person or persons unknown to these defendants, at and for a price of not more than 75c on the dollar. And these defendants deny, and call for strict proof, that said Duncan T. Parker, or anyone for him or in his behalf, ever paid to said Chas. D. Woodson $5,000 each for said five certificates, but that if said Parker, or anyone for him, ever purchased said certificates from said Woodson, they were bought for a less sum than they were directed by order of this honorable court to be sold for, and that the purchase of the same was against the order of the court, and against the instructions and without the authority of said receiver. And these defendants further state that the price paid for said certificates by said Parker, whatever said price may

have been, was not turned over or transferred by said Parker, or anyone for him, to said C. D. Woodson.

Third. These defendants are not informed as to what said Duncan F. Parker may have done with said five certificates but they do not admit, but expressly deny, the statement set forth in paragraph third of the petition of said Anniston Loan and Trust Company.

Fourth. These defendants deny each and every statement and allegation made in paragraph four of said petition of the Anniston Loan and Trust Company, and call for strict proof of same.

Fifth. These defendants deny each and every allegation of paragraph five of said petition of the Anniston Loan and Trust Company. These defendats admit, however, that said J. G. Chamberlain did make report to this honorable court, stating that the proceeds of the sale of said five certificates, numbered eight, nine, ten, eleven and twelve had been placed to the receiver's credit by Chas. D. Woodson in the First National Bank of Sheffield, Ala., less a commission for selling the same. But these defendants aver and show to the court that such statement by said receiver was made through misinformation and a mistake, brought about by the representations and misconduct of said Woodson. And that said receiver proceeded to correct said mistake in his said report so soon as he became aware of the error into which he had been led.

Sixth. These defendants admit that a decree was taken on the 3d of December, 1889, foreclosing a certain mortgage, in the cause of Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company and another, and that to said decree was attached schedule B, as set forth in the sixth paragraph of the petition and intervention of the said Anniston Loan and Trust Company. And that it was also ordered in said decree that the purchaser of the property therein authorized to be sold should pay for said eight certificates, in addition to the amount bid at the sale of said property.

Seventh. These defendants admit that this honorable court did, on the 4th of January, 1890, make a decree modifying and

changing the form of the decree of December 3d, 1889, so as to authorize the purchasers of said property so foreclosed against to contest the validity of said five certificates. But these defendants deny, as hereinbefore stated, that said five certificates were sold by said Woodson, as agent for said receiver, to said D. T. Parker, and these defendants know nothing whatever of the purchase of said certificates by said Parker from Woodson, but deny such purchase, and deny that said Woodson was duly authorized, as agent of the receiver to make any sale of said five certificates to said Parker, or anyone else. These defendants deny that said Parker, or anyone for him, did, in good faith, for a valuable consideration, and in conformity with the order of court, purchase said certificates. And these defendants deny, as hereinbefore, that said Parker made a sale of said five certificates to the Anniston Loan and Trust Company for a valuable consideration; but defendants aver that even if that should be a fact, that it in no wise makes legal and valid the sale of said certificates by said Woodson, or makes it encumbent upon these defendants, or either of them, to pay said Anniston Loan and Trust Company anything whatever upon said certificates. These defendants admit the sales of said foreclosed property on the 21st of April, 1890, as set forth in the seveneth paragraph of said petition.

Eighth. These defendants admit the statements made in the eighth paragraph of said petition of said Anniston Loan and Trust Company.

II. ANSWER TO THE AMENDED PETITION.

First. These defendants admit the matters and things set forth in the first paragraph of the amended petition of the Anniston Loan and Trust Company.

Second. These defendants deny the matters and things set forth in the second paragraph of the amended petition of the Anniston Loan and Trust Company, and call for strict proof of all the matters therein contained.

Third. These defendants deny the matters and things set forth in the third paragraph of the amended petition of the Anniston Loan and Trust Company, and call for strict proof of the same.

Fourth. These defendants deny the matters and things set forth in the fourth paragraph of the amended petition of the Anniston Loan and Trust Company, and call for strict proof of the same.

Fifth. These defendants admit the matters and things set forth in the fifth paragraph of said amended petition of the Anniston Loan and Trust Company, and for further answer refer to the statements and the answers already made to the original petition.

Sixth. These defendants admit the matters and things set forth in the sixth paragraph of said petition, except that these defendants deny that said five receiver's certificates are the property of, or are owned and held by, said Anniston Loan and Trust Company.

Seventh. These defendants admit the matters and things set forth in the seventh paragraph of the amended petition, except that they deny that said C. D. Woodson was the agent for said receiver to sell said certificates, or that said D. T. Parker purchase the same in accordance with the order of this honorable court, or that he sold them to petitioner for a valuable consideration.

Eighth. These defendants admit the matters and things set forth in the eighth paragraph of said amended petition of the Anniston Loan and Trust Company, but deny that the Anniston Loan and Trust Company has any claim whatever against these defendants, or either of them, growing out of the sale of said five receiver's certificates.

And these defendants having fully answered, pray to be hence dismissed with their reasonable costs in this behalf sustained.

HENRY B. TOMPKINS,
Sol. for Defendants.

Endorsed: Filed in clerk's office Jany. 3, 1891.
N. W. TRIMBLE, Clerk U. S. Cir. Court.

REQUEST AND ORDER APPOINTING D. D. SHELBY SPECIAL MASTER.

Case pending in the U. S. Circuit Court for Northern Div. of Northern Dist. of Alabama.
In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

In re. Intervention of the Anniston Loan and Trust Company:

The court is respectfully requested by the petitioner, the Anniston Loan and Trust Company, and by Jacob G. Chamberlain, receiver, and others, respondents, to appoint the Hon. D. D. Shelby as special master in said case.

It is further shown to the court that said petition and intervention is now at issue, and your honor is requested to make an order of reference forthe taking oftestimony therein.

HENRY B. TOMPKINS,
Sol. for Respondents.
JOHN B. KNOX,
Sol. for Anniston Loan and Trust Company.

United States Circuit Court, Northern District of Alabama, Northern Division. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Ry. Company.

In the matter of the Intervention of the Anniston Loan and Trust Company.

Considering the application of counsel herewith filed, it is ordered that the issues made up of the intervention of the Anniston Loan and Trust Company be, and they are hereby, referred to David D. Shelby, Esq., as special master, to take evidence, investigate and report.

February 26th, 1891.

DON A. PARDEE, Circuit Judge.

Endorsed: Filed in clerk's office March 6th, 1891.
N. W. TRIMBLE, Clerk, U. S. Cir. Court

AMENDMENT TO INTERVENOR'S PETITION.

In the United States Circuit Court for the Northern Division of the Northern District of Alabama.

The Central Trust Company
vs.
The Sheffield and Birmingham Coal, Iron and Railway Company.

In re. Intervention of the Anniston Loan and Trust Company:

And now comes the Anniston Loan and Trust Company, a body corporate under the laws of Alabama, intervenor in the above entitled cause, and by leave of the court first had and obtained, amends its petition and intervention in said cause by striking out the Central Trust Company as a party respondent thereto, and adding as a party respondent the Alabama Iron and Railway Company, a body corporate under the laws of Alabama.

And petitioner and intervenor, the Anniston Loan and Trust Company, also adds by amendment, by leave of the court as aforesaid, the following additional averments, viz:

Sec. 9. That since the purchase of said property by Napoleon Hill, trustee, at the foreclosure sale under the decree of this court, and which is subject to the lien of the receiver's certificates owned and held by petitioner, said purchasers of said property aforesaid have sold and conveyed the same to the Alabama Iron and Railway Company, a body corporate under the laws of Alabama. That said company was formed under the general laws of Alabama by the purchasers of said property, and said property was subscribed to its capital stock, and so conveyed in satisfaction of their subscriptions, and the property so conveyed constitutes the principal, if not the entire, assets of said Alabama Iron and Railway Company. That said company now claims to own said property and is in possession thereof.

The premises considered, petitioner prays that the said Alabama Iron and Railway Company, a body corporate, be made a party-respondent to said petition and intervention, and required to plead, answer or demur thereto within the time required by law (but answer under oath is waived), and that the relief asked in the original and amended petition and intervention in this case be granted, and petitioner will ever pray, etc.

KNOX & BOWIE,
Sols. for Anniston Loan and Trust Co.

Foot note: The respondents are required to answer each paragraph of the petition and intervention as amended, but answer on oath is waived.

KNOX & BOWIE,
Sols. for the Anniston Loan & Trust Co.

Endorsed: Amendment to petition filed by leave of court this 18th day of January, 1892.

N. W. TRIMBLE, Clerk.

Filed Jan'y 18, 1892. N. W. TRIMBLE, Clerk.

AMENDMENT TO INTERVENOR'S PETITION.

In the United States Circuit Court for the Northern Division of the Northern District of Alabama.

The Central Trust Company
vs.
The Sheffield and Birmingham Coal, Iron and Railway Company.

In re. Intervention of the Anniston Loan and Trust Company:

And now comes the Anniston Loan and Trust Company, a body corporate under the laws of Alabama, intervenor in the above entitled cause, and by leave of the court first had and obtained, amends its petition and intervention in said cause by striking out the Central Trust Company as a party respondent thereto, and adding as a party respondent the Alabama Iron and Railway Company, a body corporate under the laws of Alabama, and the Townley Coal and Coke Company, a body corporate. And petitioner and intervenor, the Anniston

Loan and Trust Company, also adds by amendment, by leave of the court as aforesaid, the following additional amendments, viz.:

Sec. That since the purchase of said property by Napoleon Hill, trustee, said Napoleon Hill, trustee, has conveyed the same to the Alabama Iron and Railway Company, a body corporate under the laws of Alabama. And since the purchase of said property by James C. Neely, trustee, the said James C. Neely has conveyed said property to the Townley Coal and Coke Company, a body corporate under the laws of Alabama. That each of said companies was formed under the general laws of Alabama by the purchasers of said property, and said property was subscribed to its capital stock and conveyed to said company in satisfaction of such subscription, and the property so conveyed constitutes the principal assets of said company. That said companies now claim to own said property and are in possession thereof.

The premises considered, petitioner prays that the said Alabama Iron and Railway Company, a body corporate, and the Townley Coal and Coke Company, a body corporate, be each made a party respondent to said petition and intervention, and required to plead, answer or demur thereto within the time required by law, and that the relief asked in the original and amended petition and intervention in this case be granted, and petitioner will ever pray, etc.

KNOX & BOWIE,
Sols. for Anniston Loan & Trust Company.

Foot note: The respondents are required to answer each paragraph of the petition and intervention as amended, but answer on oath is waived. KNOX & BOWIE,
Sols. for Anniston Loan & Trust Company.

Endorsed: Filed 19 Jan'y, 1892.
N. W. TRIMBLE, Clerk.

ORDER APPOINTING MILTON HUMES SPECIAL MASTER.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Ry. Company.

In re. Intervention of Anniston Loan and Trust Company:

The above stated interventiou having been referred to D. D. Shelby, Esq., special master in chancery, and he having taken all the testimony relating thereto, and it appearing that he is attorney for R. W. Austin, receiver of the First National Bank of Sheffield, who may be in some way interested in the result of said intervention; and that said D. D. Shelby, Esq., is unwilling to make a final and full report as special master in chancery to the court, by reason of such interest of said receiver of said national bank.

Therefore, it is hereby agreed between counsel representing the parties in interest, that Milton Humes be, and he is hereby, selected and agreed upon as special master in chancery in the place of said D. D. Shelby Esq.; and that said Milton Humes shall receive from said D. D. Shelby, Esq., all the records, depositions, papers and evidence relating to said intervention, and shall proceed to make a full report upon said intervention just as if said —— ———— had originally taken charge of said matter as special master in chancery.

It is further understood and agreed that all further and other proceedings in said cause shall be the same as if said Milton Humes had charge of said cause as special master in chancery from its inception; and that hearing upon such exceptions as may be filed by either party to the report of Milton Humes, as special master in chancery, may be had before the circuit court judge upon ten days notice by either party in interest to the other, and the judgment of said judge be considered as if made by the court in term time.

Signed in duplicate this 19 day of January, 1892.

JNO. B. KNOX,
Counsel for Anniston Loan & Trust Company.
HENRY B. TOMPKINS,
Counsel for Respondents in Intervention of Anniston Loan & Trust Company.

It appearing that Milton Humes, Esq., has been agreed upon as special master instead of D. D. Shelby, Esq., it is ordered that the foregoing consent of counsel be approved and made the judgment of the court. This in open court 19 January, 1892. ALECK BOARMAN, Judge.

Endorsed: Filed Jan'y 19, 1892.
N. W. TRIMBLE, Clerk.

MOTION OF COUNSEL FOR RESPONDENTS TO EXCLUDE CERTAIN EVIDENCE.

In United States Circuit Court, Northern District and Division of Alabama.

Central Trust Company of New York
vs.
S. & B. C., I. & Rwy. Co. and another.

In re. Intervention of Anniston Loan and Trust Company:

It appearing that Milton Humes, Esq., has been substituted as special master in chancery in place of D. D. Shelby, Esq.

Now comes R. C. Brickell and Henry B. Tompkins, counsel for respondents in said intervention, and object to certain parts of the proofs, and pray that the special master will disregard and not consider the following testimony taken in said cause before said D. D. Shelby, viz:

1. Any part of the evidence of T. L. Benham, O. H. Parker, J. R. Jones or Richard W. Austin.

2. All evidence, documentary or in the depositions of either witnesses in the cause relating to the bank account of J. G Chamberlain, receiver, with the First National Bank of Sheffield, Ala.

3. All evidence, documentary or in depositions of either

witness, relating to the giving of any mortgage or mortgages by C. D. Woodson to J. G. Chamberlain.

4. All evidence, documentary or in depositions of either witness, relating the foreclosure of any such mortgage or mortgages and sale of property therein set forth, and purchase of same.

5. All deeds or other writings relating to the property mortgaged by C. D. Woodson to J. G. Chamberlain, receiver.

6. All deeds and other writings relating to property in the city of Birmingham purchased by C. D. Woodson at foreclosure sale made by Henry B. Tompkins against Martin & Royster of mortgage given by said Martin & Royster to said Tompkins.

7. All depositions, papers, deeds, mortgages and other writings introduced in the cause, save and except the following:

(a) Depositions of J. G. Chamberlain;
(b) Depositions of J. B. Carrington;
(c) Depositions of H. E. Garth;
(d) Depositions of Henry B. Tompkins;

and only such portions of these said four depositions, and the writings and exhibits thereto annexed, as go to show that C. D. Woodson sold the five certificates, 8, 9, 10, 11 and 12, for 70 cents on the dollar, or for $17,000, and after the receiver had given him notice not to sell them at all.

(e) The order of court authorizing the issue and sale of receiver's certificates.

19 Jan., 1892.

R. C. Brickell,
Henry B. Tompkins,
of Counsel for Respondents.

Endorsed: Filed Jan. 19, 1892.

N. W. Trimble,
Clerk.

ORDER ALLOWING EXCEPTIONS TO REPORT OF MASTER TO BE HEARD IN VACATION.

In United States Circuit Court, Northern District of Alabama, Northern Division. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

In re. Intervention of Anniston Loan and Trust Company:

It is ordered by the court, upon consent of counsel for parties in interest, that the exceptions to the report of the master shall be heard before the circuit judge in vacation, upon ten days notice to the opposite party; and that the judgment so rendered upon such exceptions shall be made the decree of the court as if rendered in term time, with the right to either party to appeal.

In open court 19 Jan., 1892. ALEC BOARMAN, Judge.

Endorsed: Filed Jan. 19, 1892. H. W. TRIMBLE, Clerk.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama. In Equity. No. 150.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company.

In re. Intervention of the Anniston Loan and Trust Company:

This agreement between Intervenor and Respondents in this cause, witnesseth:

That it is consented that the respondents may file their answer to the last amended petition, of file January 19th, 1892, as of the same date with the amended petition; and that intervenor may file such objections as it may desire to the testimony offered by respondents in support of their answer to the last amended petition of file January 19th, 1892.

JOHN B. KNOX,
Solicitor for Intervenor.
HENRY B. TOMPKINS,
Sol. for Appellant.

ANSWER OF RESPONDENTS TO PETITION AND AMENDED PETITIONS OF INTERVENORS.

Filed 19 January, 1892.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division. In Equity. No. 150.

Central Trust Co. of New York
vs.
Sheffield and Birmingham C., I. and Ry. Co. and another.

In re. Intervention of Anniston Loan and Trust Company: Answer of Respondents to the Petitions and Amended Petitions of Intervenor, filed 19th January, 1892.

These respondents, the Alabama Iron and Railway Company and Townley Coal and Coke Company, come, and for answer to the said petitions and amended petitions of intervenor, by protestation, etc., say:

1. Respondents admit the matters of fact set forth in the said last petition of intervenor.

2. Respondents further answering say, that the mortgage given by Chas. D. Woodson to J. G. Chamberlain, receiver, on the 28th October, 1889, on lot or block 209 in the City of Birmingham, Alabama, has not been foreclosed by the said receiver, or these respondents or any one claiming under them, or under the said Sheffield and Birmingham Coal, Iron and Railway Company. And these respondents say that at the date of said mortgage the said lot No. 209 was subject to a vendor's lien for over $32,000; and that since that date said vendor's lien has been foreclosed in equity in the city court of Birmingham, and said lot or block No. 209 sold for a sum greatly less than sufficient to satisfy said vendor's lien. And respondents hereto attach copies of the bill in equity and other proceedings in the said city court of Birmingham foreclosing said vendor's lien, and pray that the same may be taken as a part of this answer, with liberty of reference thereto as often as may be necessary.

Respondents aver that by reason of said vendor's lien said mortgage so given by Chas. D. Woodson to Jacob G. Cham-

berlain, receiver, on 28th October, 1889, has become invalid as a security for any part of the debt due by said Chas. D. Woodson, or the First National Bank of Sheffield, to said Jacob G. Chamberlain.

Respondents further set forth and show that the said mortgage so given by said Woodson to said receiver upon said lot or block 209 in the city of Birmingham, on the 28th October, 1889, had endorsed upon it by the said Chas. D. Woodson on the 27th November, 1889, and duly acknowledged before L. W. Dimmick, a notary public for Colbert county, Alabama, the following words: "For value received I hereby waive and renounce all and any right of redemption, equitable or otherwise, that I may have to redeem said above described real estate in event the same shall be sold under foreclosure. The above described land is subject to vendor's lien, and to redemption by Drennen, of Birmingham, as purchaser from Royster and Martin."

3. Respondents further answering say, they also attach hereto as "Exhibit B," and prayed to be made a part of this answer, with liberty of reference thereto as often as may be necessary, proceedings foreclosing the mortgage given by Chas. D. Woodson to Jacob G. Chamberlain, receiver, on the 9th November, 1889, on the Sheffield property; which mortgage was duly foreclosed on the 30th October, 1890. And respondents also attach as part of "Exhibit C" the judgment foreclosing said mortgage upon real estate; and also the judgment selling under due and proper proceedings certain notes placed in the hands of said receiver by the First National Bank of Sheffield, Alabama, as collateral security for the debt due by it to the said receiver. And respondents also attach as a part of "Exhibit C" a deed made by the said Jacob G. Chamberlain to Alabama Iron and Railway Company, granting and selling to the said Alabama Iron and Railway Company, the aforesaid real estate so mortgaged and foreclosed; and also the said notes above referred to, title to all of which said property, real and personal, vested in the Alabama Iron and Railway Company at the time of the said deed by said Chamberlain, to-wit, on the 6th day of November, 1890.

Respondents further answering say, that the amount ascertained and agreed to be due by the First National Bank of Sheffield to Jacob G. Chamberlain, receiver, as of the 30th day of October, 1889, was $7,305.29; and that this amount was ascertained and agreed to by and between Jacob G. Chamberlain, on the one part, and Richard W. Austin, receiver of the First National Bank of Sheffield, on the other part.

And respondents further set forth and show that the amount realized to the said Jacob G. Chamberlain, receiver of the said Sheffield and Birmingham Coal, Iron and Railway Company, by and on account of the sale of the said Sheffield real estate so mortgaged to him by Chas. D. Woodson on the 9th November, 1889; and by the sale of the said seven notes so transferred to Chamberlain, as collateral security, by the said First National Bank of Sheffield, was the sum of $3610; and that there now remains due of the said sum of $7,305.29 so as aforesaid found due to Jacob G. Chamberlain, as receiver, the sum of $3,695.29, the balance not realized by the foreclosure of said mortgage on the Sheffield property and the sale of said collateral transferred to said Chamberlain by the First National Bank of Sheffield.

4. Respondents further state that a copy of said mortgage of 9th November, 1889, was submitted as a part of the proofs for the intervenor in this cause; but that said intervenor did not submit the proceedings foreclosing said mortgage, the transfer of said mortgage by Jacob G. Chamberlain to the Alabama Iron and Railway Company, made on the 1st September, 1890; which said last named papers other than said mortgage itself are, as aforesaid, attached to this answer as "Exhibit C"

5. Respondents further set forth and show that whatever may have been the contention between said Chas. D. Woodson and Jacob G. Chamberlain, receiver; or between the said Chamberlain and said Richard W. Austin, said receiver of the First National Bank of Sheffield, as to the amount due said receiver by said First National Bank of Sheffield at the time of its suspension, that all of these matters were settled and adjusted by and between said Chamberlain, receiver, and said Richard W. Austin, receiver, when they agreed, as aforesaid,

that the amount due said Chamberlain at the time of the failure of said bank was $7,305.29 as of the 30th day of October 1889.

And respondents aver that this adjustment between the two said receivers disposed of any claim on the part of the intervenor that the said First National Bank ever did have in actual money the proceeds of the two said acceptances spoken of so often in the proofs in this cause, amounting to $10,000, or the five said receiver's certificates sued for by intervenor.

And respondents further set forth and show to the court that, in fact, and in truth, none of the money realized by said Woodson, either in person or as president of the Frst National Bank of Sheffield, from said two acceptances or from said five receiver's certificates, ever did go actually and in money to the credit of Jacob G. Chamberlain, receiver, as a depositor in or dealer with the First National Bank of Sheffield; and that said moneys nor any part of them were ever subject at any time to the draft of said Chamberlain, as receiver or otherwise.

6. And respondents further answering aver and show to the court that they, as successors to the property, rights and liabilities of the Sheffield and Birmingham Coal, Iron and Railway Company, cannot be made in law to pay for receiver's certificates, the proceeds of which were taken by Chas. D. Woodson under a sale made by him without warrant or authority of said Jacob. G. Chamberlain, receiver—a sale not made in conformity with the order of court referred to in the body of each of said certificates—and no part of the proceeds of which sale were ever turned over by the said Chas. D. Woodson to the said Jacob G. Chamberlain in money, or ever put actually and in fact in money to the credit of said Jacob G. Chamberlain in the said First National Bank of Sheffield, or in any other bank.

7. Respondents further answering aver and show to the court that the amount set forth in said mortgages given by Woodson to Chamberlain, and in the notes to secure which said mortgages were given, was stated to be $33,335.00, and that said sum of money was made up (1) of the $10,000 for two acceptances of Chamberlain, Wheeler & Co., which the said Woodson sold and disposed of without paying over the

proceeds to said receiver, and (2) from the estimated amount of the said five receiver's certificates, the proceeds of which said Woodson promised to place in said First National Bank of Sheffield to the credit of said receiver, and which said receiver was led to believe had been done when he made his report to the court concerning said certificates.

And respondents aver that there never was any debt due by the said First National Bank of Sheffield to said Jacob G. Chamberlain for and on account of the proceeds of said certificates; that said Woodson never did deposit said proceeds in said First National Bank of Sheffield to the credit of said receiver; nor did the said Chambelain, receiver, ever at any time agree to credit the First National Bank of Sheffield, or expect it to make good the amount of said receiver's certificates so sold by said Woodson.

Respondents further show to the court that the amount hereinbefore stated, $7,305.29, agreed upon as being due by the First National Bank of Sheffield to Jacob G. Chamberlain, receiver, at the time of its failure, was due without reference to or taken into account the said amount of money that may have been realized by said Chas. D. Woodson for the sale of said receiver's certificates.

Wherefore, respondents having fully answered, pray to be hence dismissed, &c.

HENRY B. TOMPKINS,
Sol. for Respondents.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama. In Equity. No. 150.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company.

In re. Intervention of the Anniston Loan and Trust Company:

And now comes the intervenor in this cause, by its solicitor, and files the following objections to the admisibility of the transcript offered by respondents in cause No. 868, in the

city court at Birmingham, in equity, in the cause wherein Henry B. Tompkins is complainant, and Charles D. Woodson is respondent, upon the following grounds, viz:

1. Said paper offered in evidence and purporting to be a transcript of proceedings in said cause in said city court of Birmingham, is not properly or sufficiently or legally authenticated.

2. There is no sufficient evidence that the paper offered in evidence is a transcript of proceedings in said city court or of any court.

3. The transcript offered in evidence is incompetent, illegal and irrelevant testimony in this cause.

Intervenor objects to the admission of the paper purporting to be the original mortgage executed by Charles D. Woodson to Jacob G. Chamberlain, receiver, with endorsement purporting to have been made by Charles D. Woodson in reference to a vendor's lien on said property—offered in evidence by respondents; and intervenor objects separately to said endorsement on said original mortgage purporting to have been made by said Charles D. Woodson in reference to the existence of a vendor's lien on said block 209 in the City of Birmingham, upon the following grounds:

1. Because the said alleged endorsement of said Woodson was made long after the execution and delivery of said mortgage by him to Jacob G. Chamberlain, receiver.

2. Because it does not appear that Jacob G. Chamberlain, receiver, had any notice of the existence of said lien.

3. Because it was incompetent for said Charles D. Woodson, by any admission or declaration he should make after the execution and delivery of said mortgage to Jacob G. Chamberlain, receiver, to affect the lien of said mortgage in the hands of said Chamberlain, receiver, or to affect the rights of respondents or intervenor.

4. Because there is no proof of the execution of said alleged endorsement.

5. Because it is not shown that said endorsement was made by Charles D. Woodson or by his authority.

JOHN B. KNOX,
Solicitor for Intervenor.

EXHIBIT A.

Filed with Answer of Respondents made 19 February, 1892.

State of Alabama,
Jefferson County.

In the City Court of Birmingham. In Chancery.

To the Honorable H. A. Sharpe, Judge of the City Court of Birmingham, having jurisdiction in equity:

Henry B. Tompkins, who is a citizen of and residing in the State of Georgia, brings this, his bill, against Chas. D. Woodson, who is a citizen of the State of Alabama, residing at Sheffield, Colbert county, Ala.

1. And whereupon your orator complains and says that on the 7th day of January, 1888, he made, executed and delivered to said Chas. D. Woodson, a deed for block number two hundred and nine (209), lying between Twenty-Sixth and Twenty-Seventh Sts., and Eighth and Ninth Avenues, north, in Birmingham, Ala., in said county of Jefferson, which deed was duly signed and acknowledged by your orator, and recorded in the probate office of said Jefferson county on 23d January, 1888, all of which will appear by reference to a copy of said deed hereto annexed, marked "Exhibit A," and prayed to be made a part of this bill, with liberty of reference thereto as often as may be necessary.

2. Your orator further sets forth and shows to your honor that said Woodson also made a note for the purchase price of said lot of land, and the whole of which note is still due and unpaid, and is as follows, to-wit:

"$32,000.00. Sheffield, Ala., 7 January, 1888.

One day after date, I promise to pay Henry B. Tompkins, or order, thirty-two thousand dollars, payable at the First National Bank, Sheffield, Ala., for value received, with interest at eight per cent. per annum after maturity until paid, with all costs of collection, including ten per cent. as attorney's fees. This note given for lot 209 in Birmingham, Ala.

And I expressly waive all my exemption right to any property, real or personal, under the constitution and laws of the State of Alabama, or of the United States, as against the payee or assignee of this note, in regard to the collection thereof.

Given under my hand and seal.

CHAS. D. WOODSON. (L. S.)'

3. Your orator sets forth and shows unto your honor that he is not due said Chas. D. Woodson any sum of money whatever, and that said block of land is still owned, controlled and in the possession of said Chas. D. Woodson, who, since the date of said purchase, on 7th January, 1888, has paid the taxes thereon and received the rentals therefrom, and your orator now desires to establish and foreclose his vendor's lien upon said block of land as set forth and described in "Exhibit A" hereinbefore referred to. Your orator expressly waives discovery under oath from said defendant.

4. Wherefore, the premises considered, your orator prays your honor that a summons may be issued out of this honorable court directed to said defendant, Chas. D. Woodson, requiring him to be and appear before this honorable court at a time certain, and under a penalty therein to be fixed, then and there to demur, plead or answer to the allegations set forth in this bill. And your orator also prays that upon the hearing of this cause a decree will be rendered finding said defendant indebted to your orator in the amount set forth and stipulated in said promissory note of 7th January, 1888, hereinbefore fully set forth and copied, and that a decree may also be rendered subjecting said block of land set forth and described in "Exhibit A" hereto annexed, to be sold for the payment of the amount of money so found due to your orator by said Chas. D. Woodson, under a vendor's lien to be established and decreed by this honorable court.

And your orator further prays for all such other relief, orders, judgments and decrees, as in the nature of the case shall be meet and equitable; and your orator will ever pray, etc.

J. M. WHITE,
HENRY B. TOMPKINS,
Solicitors for Complainant.

Foot Note: Complainant desires the defendant to answer:

1. If defendant did not purchase the block of land as set forth and described in the bill and in "Exhibit A" thereto annexed, and accept the deed therefor.

2. If he has not paid the taxes and received the rents and profits from said block 209 since said purchase.

3. If the promissory note set forth in the body of the bill is not due and unpaid, as therein stated.

HENRY B. TOMPKINS, Sol., etc.

The State of Alabama,
Jefferson County.

This indenture, made and entered into this the seventh day of January, 1888, between Henry B. Tompkins, of Atlanta, Georgia, party of the first part, and Chas. D. Woodson, of Sheffield, Alabama, party of the second part, witnesseth:

Whereas, On the first day of December, 1886, the said party of the first part sold to N. C. Royster and John Martin, of said state and county, block number 209, in the city of Birmingham, and which land is hereinafter fully described; and

Whereas, On said first day of December, 1886, said Royster and Martin executed and delivered to said party of first part their two promissory notes, each for the sum of thirteen thousand, three hundred and thirty-three dollars and thirty-three cents ($13,333.33), both notes bearing interest at 8 per cent per annum from date, and one due on 1st December, 1887, and the other due on 1st December, 1888; and

Whereas, Said Royster and Martin, together with their wives, did on said 1st December, 1886, also execute and deliver to said party of first part a mortgage on said land to secure the payment of said two notes, the same being the unpaid purchase money for said land, and which mortgage provided that the same should be foreclosed as to the whole debt if the first of said notes was not paid at maturity, and which said debt, nor any part thereof has been paid; and

Whereas, The said mortgage was duly recorded in book volume 76, in the office of the probate judge of said county, on the sixth day of January, 1887, and has been duly foreclosed by advertisement in the daily Birmingham Age, a newspaper published in said city of Birmingham, by publication on Wednesdays, the 7, 14, 21 and 28 day of December, 1887, and on Wednesday, the 4th day of January, 1888, as follows, to-wit:

MORTGAGE SALE.

Under and by virtue of the power of sale contained in a cer-

tain deed of trust or mortgage executed to Henry B. Tompkins by N. C. Royster and his wife. M. T. Royster, and John Martin and his wife, Abbie Martin, on the first day of December, 1886, which said mortgage was filed for record on the 29th day of December, 1886, and was recorded on 6th January, 1887, in volume 76 record of deeds, page 224, in the office of the judge of probate of Jefferson county, Alabama, I will proceed to sell on Saturday, the (7th) seventh day of January, 1888, in front of the court house door of said county, at public outcry to the highest bidder for cash, between the legal hours of sale, the following described real estate, to-wit: (Situated and lying in the city of Birmingham, known and described according to the present survey and plan of the Elyton Land Company's map, as follows, to-wit). All of block number two hundred and nine (209) lying between 26 Twenty-sixth and Twenty-seventh (27) streets and Eighth and Ninth avenues, north. Such sale being made to satisfy and pay off the full amount of principal, interest and expenses of advertising and attorneys' or solicitors' fees, due under the terms of the notes and mortgage to secure the same given by said mortgagors to said mortgagee.

HENRY B. TOMPKINS,
Mortgagee.

MORRIS BRANDON,
Attorney for Mortgagee.

And Whereas, On Saturday the 7th day of January, 1888, the said land was duly exposed for sale at the court house door in said city of Birmingham, between the legal hours of sale, by J. T. Wilson, auctioneer, and was duly bid in by the party of the second part, he being the highest and best bidder for the same, at and for the sum hereinafter set forth as the consideration for sale land.

Now, for and in consideration of the sum of thirty-two thousand dollars ($32,000), to the party of the first part, by the party of the second part, in hand paid at and before the signing and delivery of these presents, the receipt whereof is hereby acknowledged, the said party of the first part doth grant, bargain, sell and convey, and by these presents hath granted, bargained, sold and conveyed to the said party of the

second part, his heirs, administrators and assigns, all that certain block of land number 209 in the city of Birmingham and hereinbefore fully set forth and described in the advertisement of the sale under said mortgage.

To have and hold the said block of land, together with the appurtenances thereto belonging or in anywise appertaining, unto him the said party of the second part, his heirs, administrators and assigns in fee simple forever. And the said party of the first part for himself, heirs, administrators and assigns doth covenant with the said party of second part, his heirs, administrators and assigns, that he shall and will forever warrant and defend the title to the said lot of land against the lawful claims of all persons whomsoever.

In witness whereof, the said party of the first part hath hereto set his hand and seal this, the day and year first above written.

(Signed:) HENRY B. TOMPKINS. (Seal.)

The State of Alabama, }
County of Jefferson. }

I, Edward T. Martin, a notary public, in and for said state and county, hereby certify that Henry B. Tompkins, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me, this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this 7th day of Jan'y, 1888.

(Signed:) EDWARD T. MARTIN, Notary Public.

State of Alabama, }
Colbert County. }

Before me J. C. Boylston, J. P. in and for said county, personally came W. S. White, who is known to me, and who makes oath that he saw Charles D. Woodson sign his name to an acknowledgment of service you a bill filed by Henry B. Tompkins against said Charles D. Woodson for foreclosure of vendor's lien upon lot two hundred and nine (209) in Jefferson county, Alabama, which bill is filed in the city court of Birmingham in an equity suit therefor.

W. S. WHITE.

Sworn and subscribed to before me, this the 15th day of Jannary, 1890. J. C. BOYLSTON, J. P.

The State of Alabama, }
Colbert County. }

Service of the within and foregoing bill and exhibit acknowledged. Copy bill, summons copy, summons and all other and further notice and service waived, and consent given that the bill may be filed as if summons and copy bill had been regularly served on this day.

This 11th day of December, 1889.

CHAS. D. WOODSON.

In presence of W. S. White.

Endorsed: Filed in office, this 13th day of Dec., A. D. 1889.
N. L. MILLER, Clerk and Register.

Recorded in Vol. 21, page 350.

SUMMONS.

The State of Alabama, }
Jefferson County. }

City Court of Birmingham. In Equity.

To any Sheriff of the State of Alabama—Greeting:

We command you that you summon Chas D. Woodson, of Colbert county, to be and appear before the judge of the city court of Birmingham, exercising chancery jurisdiction, within thirty days after the service of this summons, and then and there to answer, plead or demur, without oath, to a bill of complaint lately exhibited by Henry B. Tompkins against said Chas. D. Woodson; and further to do and perform what said judge shall order and direct in that behalf; and this the defendant shall in no wise omit, under penalty, etc.

And we further command that you return this writ, with your endorsement thereon, to our court immediately upon the execution thereof.

Witness, Nathan L. Miller, clerk and register of said city court of Birmingham, at office in Birmingham, this 13th day of Dec., 1889.

NATHAN L. MILLER, Clerk and Register.

Executed this 19 day of Dec., 1889, by leaving a copy of the within summons with Chas. D. Woodson.

G. S. WEAVER, Sheriff, Colbert County.

City Court of Birmingham. In Chancery. At Birmingham, Ala.

Henry B. Tompkins
vs.
Charles D. Woodson.

In this cause, it being made to appear to the court that a summons was served upon the defendant, Charles D. Woodson, by the sheriff of Colbert county on the 19th day of December, 1889, requiring him to appear and plead, answer or demur to the bill of complaint in this cause within thirty days from the service of said summons, and the said defendant having failed to plead, answer or demur to the said bill to the date hereof. It is now, therefore, on motion of complainant, ordered and decreed that the said bill of complaint in this cause be, and it hereby is, in all things, taken as confessed against the said Charles D. Woodson, defendant aforesaid.

This 20th day of January, 1890.

H. A. SHARPE,
Judge of the City Court of Birmingham.

Endorsed: Filed in office this 20 day of January, 1890.
N. L. MILLER, Clerk and Register.

The State of Alabama,
Jefferson County.

City Court of Birmingham, Alabama. In Chancery.
At Birmingham, Alabama.

Henry B. Tompkins,
v.
Charles D. Woodson.

This cause is submitted in behalf of complainant upon the original bill of complaint, decree pro confesso, and the deed executed by the complainant to the defendant on the 7th day of January, 1888, and recorded in the office of the judge of probate of Jefferson county, in volume 96 of mortgages, page 455, and also the promissory note given by the defendant to the complainant on the 7th day of January, 1888, due one day after date, it being stated in said note that it was given for lot 209 in Birmingham, Alabama, said note being for the sum of thirty-two thousand dollars.

This 23d day of January, 1890.

NATHAN L. MILLER, Clerk and Register.

Endorsed: Filed in open court this 23d day of January, 1890. NATHAN L. MILLER, Clerk and Register.

State of Alabama, Jefferson County

In Chancery. In the City Court of Birmingham.
September Term, 1889-90.

Henry B. Tompkins, Complainant
vs.
Charles D. Woodson, Defendant.

This cause came on this day to be heard, and it appearing to the court that a decree pro confesso has been regularly entered on the 20th of January, 1890, and the cause being submitted on said decree pro confesso, the pleadings and proofs, as noted in open court by the clerk and register, the documentary proofs being the original deed and note as set forth in the bill of complaint, and the amount due being of easy calculation, the court made the calculation and ascertained the amount as below stated.

Thereupon, on consideration thereof the court is of the opinion that the complainant is entitled to the relief prayed for in his bill, and that he has a vendor's lien on the real estate set forth and described in the said bill of complaint for the sum of thirty seven thousand two hundred and thirty-three and seventy-seven hundredths ($37,233.77) dollars, with interest on that sum from this date; and is entitled to a foreclosure of the vendor's lien, set upon the bill of complaint, for that sum and a sale of said real estate for the satisfaction of said sum; and that as to the collection of said sum the defendant has waived his right to the exemption of any personal property, and that such fact be endorsed on any execution that may be hereinafter issued for the collection thereof.

It is therefore considered, ordered, adjudged and decreed that the said defendant, Charles D. Woodson, shall pay said sum of $37,233 77, with interest thereon from this date, together with the cost of this suit, within five days after the date of this decree, to the clerk and register of this court, by said clerk and register to be paid over to complainant. And in default thereof the said clerk and register shall proceed to advertise and sell said block of land, described in the original

bill, viz: Situate, lying and being in the city of Birmingham, county of Jefferson and state of Alabama, known and described according to the survey and plan of the Elyton Land Company as follows: All of block two hundred and nine (209) lying between Twenty-Sixth street and Twenty-Seventh street and between Eighth and Ninth avenues, north. Said block of land to be sold at public auction before the court house door in the city of Birmingham, Alabama, to the highest and best bidder for cash, first giving thirty days notice of the time place and terms of sale by advertising in the Daily Age Herald, once a week for four weeks, a newspaper published in said county. And that out of the proceeds of said sale, said clerk and register return the costs and expenses of this suit and of said sale, and apply the remainder thereof to the payment of purchase money decree as aforesaid, and the balance, if any, pay to the said defendant.

The said complainant is authorized to bid at said sale. The clerk and register will make a deed of conveyance of said real estate to the purchaser at said sale, upon his complying with the terms thereof, of all the interest and title which the parties to this suit, or either of them, have in said real estate; and shall then report to this court his action in the premises.

23 January, 1890. H. A. SHARPE,
Judge, &c.

Endorsed: Filed in office this 23d day of Jany., A. D. 1890.
N. L. MILLER,
lerk and Register.

The State of Alabama,
Jefferson County

City Court of Birmingham. In Chancery.

Henry B. Tompkins
vs.
Charles D. Woodson

To the Honorable H. A. Sharpe, Judge of the City Court of Birmingham:

Whereas a decree was rendered on the 23d day of January, A. D. 1890, by said court, that unless the defendant pay to the complainant the amount of thirty-seven thousand, two hundred and thirty-three and 77-100 ($37,233.77) dollars, the

sum decreed to be due complainant from the defendant upon the claim in the bill mentioned, within five days from the date of this said decree, together with the cost of suit, that the clerk and register of said court proceed, without delay, to sell the lands in the bill described, and report his action therein to the said court.

Now, therefore, I, Nathan L. Miller, as clerk and register and master in chancery, do hereby certify and report that the defendant having wholly failed and refused to comply with the requirements of said decree within the time specified:

I did, on Monday, the 3d day of March, A. D. 1890, after advertising the time, place and terms of sale, together with a description of the lands, in the Daily Age-Herald, a newspaper published in Birmingham, Alabama, for thirty days, sell at public outcry to the highest bidder, for cash, in front of the door of the court house of Jefferson county, Alabama, the following lands, to-wit: Situate, lying and being in the city of Birmingham, in the county of Jefferson and state of Alabama, known and described according to the survey and plan of the Elyton Land Company, as follows: All of block two hundred and nine (209) lving between Twenty-Sixth street and Twenty-Seventh street and between Eighth and Ninth avenues, north, at which sale Henry B. Tompkins became the purchaser of said lands at the sum of twenty thousand ($20,000) dollars, which was the best bid for the same at said sale.

I further certify that the purchaser having complied with the terms of sale, I executed to him a deed to said lands.

I further certify that out of the proceeds of said sale, I retained the sum of two hundred and twenty-six and 70-100 dollars, as cost of suit, commissions and expenses of sale, and the remainder I applied to the satisfaction of the complainant's demand as far forth as it would extend.

I further certify that there is still due complainant the sum of seventeen thousand, six hundred and ninety and 43-100 ($17,690.43) dollars, with interest from March 3, 1890.

All of which is respectfully submitted this 3d day of March, 1890. NATHAN L. MILLER, Clerk and Register.

Filed in open court 3d day of March, 1890.

N. L. MILLR, C. & R.

State of Alabama,
Jefferson County.

In Chancery in City Court of Birmingham, September Term, 1889-90.

Henry B. Tompkins, Complainant,
vs.
Chas. D. Woodson, Defendant.

To the Honorable H. A. Sharpe, Judge City Court of Birmingham:

The petition of the above named complainant respectfully shows that in compliance with the decree rendered by this honorable court on the 23d day of January, 1890, Nathan L. Miller, Esq., clerk and register, duly advertised for sale block 209, as set forth and described in said decree, and that the same was sold at 12 o'clock, noon, on Monday the 3d day of March, 1890, for twenty thousand dollars, petitioner becoming the purchaser thereof. That this amount of $20,000, less the costs and charges of court, being credited upon the debt found to be due petitioner by said Chas. D. Woodson, there still remains due on the said decree of this honorable court, granted on 23d January, 1890, the sum of $17,695.43, with interest on that sum from the 3rd day of March. 1890, all of which is accurately set forth and shown in the report of N. L. Miller, clerk and register, made and filed in this honorable court on the 3d day of March, 1890, to which reference is hereby made, and the same is asked to be considered as embodied in this petition.

Wherefore, the premises considered, petitioner prays the court for an order confirming said report of said clerk and register; and also that this honorable court will decree a personal judgment in favor of said Henry B. Tompkins against Chas. D. Woodson for the sum of $17,695.43, besides the costs of this proceedings, and for which execution may issue out of this honorable court, in conformity with the statutes and laws regulating the same.

And petitioner prays for all such further orders, judgments and decrees as in the premises are equitable, meet and proper.

HENRY B. TOMPKINS,
Sol. for Complnt.

Endorsed: Filed in office, this 8 day of March, A. D. 1890.
NATHAN L. MILLER,
Clerk and Register.

In the City Court of Birmingham. In Equity.

Henry P. Tompkins
vs.
Charles D. Woodson.

In the petition of complainant for the confirmation of the report of the clerk and register, etc.

This matter coming on to be further heard, upon the motion of complainant to confirm the report of the clerk and register herein filed on the 3d day of March, 1890, and it appearing to the court that the report of the clerk and register has been duly made, as set forth in said petition of the complainant, filed and read in open court on the 3d day of March, 1890, and that said report of the clerk and register, as well as said petition, have lain over for more than one day since the filing, and no exceptions thereto having been filed; and it further appearing that the facts set forth in said petition and in said report of the clerk and register are true;

It is, thereupon, ordered, adjudged and decreed by the court that said report of said Nathan L. Miller, clerk and register, concerning the sale made by him of block 209, as shown by said report filed on 3d of March, 1890, be, and the same is hereby confirmed. And it further appearing from said report of the clerk and register that there is a balance due from the defendant to the complainant on account of the purchase money described in the bill, after applying thereto the proceeds of the said sale, amounting to the sum of seventeen thousand six hundred and ninety-five and 43-100 ($17,695.43) dollars.

Now, upon the petition of the complainant herein filed and now presented, praying for a personal decree for said balance, it is further ordered, adjudged and decreed that said Charles D. Woodson do pay to the said Henry B. Tompkins the said balance of the sum of seventeen thousand six hundred and ninety-five and 43-100 ($17,695.43) dollars, with interest on

this sum from the 3d March, 1890, and also the costs of this proceeding, for which execution may issue.

This 11th day of March, 1890. H. A. SHARPE, Judge, etc.

Endorsed: Filed in office this 11th day of March, 1890.
NATHAN L. MILLER, Clerk and Register.

State of Alabama, Jefferson County.

In the City Court of Birmingham, having jurisdiction in Equity.

Henry B. Tompkins, complainant, vs. Charles D. Woodson, defendant.

I, Nathan L. Miller, clerk and register of the city court of Birmingham, do hereby certify that on the 11th day of March, 1890, the honorable city court of Birmingham rendered a general personal judgment or decree in favor of Henry B. Tompkins against Charles D. Woodson, for the sum of seventeen thousand, six hundred and ninety-five and 43-100 ($17,695.43) dollars, and the amount of one and 85-100 ($1.85) dollars, as costs in and about the proceedings connected with said judgment. That the names of the attorneys for complainant were Jos. M. White and Henry B. Tompkins, and said judgment is owned and controlled by Henry B. Tompkins, complainant, against Charles D. Woodson, defendant, and that it was rendered for an amount found to be due by the court over and above what was realized by the sale of certain property upon the foreclosure of a vendor's lien.

In witness whereof, I have hereunto set my hand and official seal, this the 22 day of March, A. D. 1890.

NATHAN L. MILLER, Clerk and Register.

State of Alabama, Colbert County.

I hereby certify that the within judgment was filed in my office for record on March 26, 1890, at —— o'clock, — M., and

The State of Alabama, }
Jefferson County. }

To any Sheriff of the State of Alabama—Greeting:

We command you, as heretofore, that of the goods and chattels, lands and tenements of Charles D. Woodson, you cause to be made the sum of seventeen thousand, six hundred and ninety-five and 43-100 dollars ($17,695.43), which, at the September term, 1889-90, of the city court of Birmingham was decreed to be paid by the said Charles D. Woodson to Henry B. Tompkins, in the cause of Henry B. Tompkins vs. Charles D. Woodson, besides costs of our city court of Birmingham in that behalf expended, as appears to us of record. And we further command that you have the said moneys before our city court of Birmingham, Ala., within ninety days from the date hereof, to render to said Henry B. Tompkins in satisfaction of this decree; and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness, Nathan L. Miller, clerk and register of said city court of Birmingham, at office in Birmingham, the 26 day of July, A. D. 1890. NATHAN L. MILLER, Clerk and Register.

This execution was placed in my hands on this the 12th day of Sept., 1890. G. S. WEAVER,
Sheriff of Colbert County, Ala.

Under and by virtue of the within alias fieri facias I have this day levied on all the interest, claim and title of Chas. D. Woodson in lots one (1), two (2), three (3), four (4), seventeen (17), and eighteen (18), in block sixty-two (62); lot fourteen (14) in block 78; lots 1 and 2 in block 2; lot 3 in block 44; lot 9 in block 9; lot 6 in block 64; lot 2 in block 77; lots 3 and 4 block A; and lots 9 and 10 block C, Oak Hill subdivision; lots 7 and 8 block 2; lot 9 block 56. All of the above described property lying in the city of Sheffield, Colbert county, Alabama. And all the undivided one-half interest of said Chas. D. Woodson in and to the south half of the east half of northwest quarter of section three (3), township four (4), range eleven (11) west, lying in Colbert county, Alabama; and gave notice of said levy by posting written notices at court house door. And also, the following personal property, to-

wit, thirty and one-half shares of the Alabama Improvement Company stock standing in the name of Chas. D. Woodson on the books of said company, and have given notice of the above levy by posting written notice at court house door of Colbert county, Alabama, and by publication for three consecutive weeks in the Sheffield Enterprise, a newspaper published in Sheffield, Alabama.

This the 12th day of Sept., 1890.

G. S. WEAVER,
Sheriff of Colbert County, Ala.

Under and by virtue of the within execution, I have this day levied on the following personal property of Chas. D. Woodson, to-wit: fifty shares of the capital stock of the Sheffield Land, Iron and Coal Company of Alabama, standing in the name of Chas. D. Woodson on the books of said company, and have given written notice of this levy to Jo. V. Allen, the custodian of the books of transfer of said Sheffield Land, Iron and Coal Company of Alabama.

This 19th day of Sept., 1890.

G. S. WEAVER,
Sheriff Colbert County, Ala.

All of the property levied above was sold by me on 20th October, 1890, for the sum of two hundred and eighty-five dollars, and was purchased by H. B. Tompkins. The judgment is to be considered with the above amount less forty and 80 dollars cost.

This 20th Oct., 1890.

GEO. S. WEAVER,
Sheriff Colbert County, Ala.

Credit this fi. fa. with $29.15 collected on former fi. fa. June 9, '90.

N. L. MILLER, Clerk and Register.

Issued this 26th day of July, 1890.

Sheriff.

State of Georgia,
Fulton County.

I, Nathan A. Brown, a notary public in and for said State and county, hereby certify, under my official seal, that the foregoing seventeen (17) sheets of paper of printing, writing

and typewriting, comprises a true and accurate copy of the proceedings in the city court of Birmingham, in chancery, in the case of Henry B. Tompkins vs. Chas. D. Woodson for foreclosure of vendor's lien in said court. Said papers being:

(a) Bill in equity, exhibit thereto and service of same upon Chas. D. Woodson, in case of Henry B. Tompkins vs. Chas. D. Woodson, in equity, in the city court of Birmingham.

(b) Summons attached thereto by Nathan L. Miller, clerk and register.

(c) Decree pro confesso granted by said court on 20th January, 1890.

(d) Note of testimony taken at the time of submission of the cause for decree.

(e) Decree granted by the court on 23d January, 1890.

(f) Report of clerk and register upon the sale made under said decree, filed on 3d March, 1890.

(g) Petition of complainant for confirmation of said report of said clerk and register for decree and for personal judgment for balance.

(h) Decree of court confirming sale, and granting personal decree on 11th March, 1890.

(i) Certificate of Nathan L. Miller, clerk and register, as to general personal judgment, dated 22d day of March, 1890, and the certificates thereon, of Jno. A. Steele, judge of probate, Colbert county, Alabama; and Wm. T. Porter, judge of probate, Jefferson county, Alabama.

(j) Fi. fa. issued upon said personal judgment on 23d June, 1890, with endorsements thereon by sheriff of Colbert county.

(k) Alias fi. fa. issued on the 26th day of July, 1890, with endorsements thereon by Sheriff of Colbert county.

This 24th February, 1892.

N. A. BROWN,

(Seal) Notary Public, Fulton County, Ga.

EXHIBIT B.

Filed with Answer of Respondents, made 19 Feb'y, 1892.

The State of Alabama,
Jefferson County.

Know all men by these presents, That, whereas, the undersigned, Charles D. Woodson, of Sheffield, Ala., is justly indebted to Jacob G. Chamberlain, receiver, in the sum of thirty-three thousand three hundred and thirty-five dollars, due by two promissory notes for the sum of twenty-three thousand five hundred dollars ($23,500), and one for the sum of nine thousand eight hundred and thirty-five dollars ($9835), both said notes given on 14 October, 1889, and due one day after date, with interest from date at 8 per cent. per annum until paid, both said notes signed by First National Bank of Sheffield, Ala., and by C. D. Woodson; and whereas, the said Charles D. Woodson is desirous of securing the prompt payment of said notes when same fall due, now therefore, in consideration of said indebtedness, and to secure the prompt payment of the same, at maturity, he, the said Charles D. Woodson, has bargained and sold, and I do hereby grant, bargain, sell and convey unto the said Jacob G. Chamberlain, receiver, his assigns and successors, the following described real estate, situated in said county and State, to-wit:

Situate and lying in the city of Birmingham, known and described according to the present survey of the Elyton Land Company's map, as follows, to-wit: All of block No. two hundred and nine (209), lying between Twenty-Sixth and Twenty-Seventh Streets and Eighth and Ninth Avenues, north. The said lot of land being purchased by said C. D. Woodson on seventh day of January, 1888, at a mortgage foreclosure sale made by Henry B. Tompkins, mortgagee, against N. C. Royster and John Martin, mortgagors, and the deed executed by said Tompkins at said sale being recorded in the office of the judge of probate of Jefferson Co., Ala, on 23 January, 1888, in Vol. 96 of mortgages, on page 455.

The above described land warranted free from all encumbrances and against any adverse claims.

To have and to hold the above granted premises unto the

said Jacob G. Chamberlain, receiver, his successors and assigns forever; and for the purpose of further securing the payment of said two aforesaid promissory notes, I do hereby agree to pay all taxes or assessments when imposed legally upon said premises, and should I make default in the payment of the same, the said J. G. Chamberlain, receiver, may at his option pay off the same.

Upon condition, however, that if said Charles D. Woodson or said First National Bank pay said notes and re-imburse said J. G. Chamberlain for any amounts he may have expended as taxes, and interest thereon, then this conveyance is to be null and void; but should default be made in the payment of any sum expended by the said J. G. Chamberlain, or should said notes or any part thereof, or the interest thereon, remain unpaid at maturity, or should the interest of said J. G. Chamberlain, receiver, or his assigns, in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events the whole of said indebtedness shall at once become due and payable, and this mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the said J. G. Chamberlain, receiver, his successors, agents or assigns, shall be authorized to take possession of the premises hereby conveyed, and after giving fifteen days notice of the time, place, and terms of sale by publication three times a week for two weeks in some newspaper published at Birmingham, in said county and State, to sell the same in front of the court house door of said county at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First. To the expenses of advertising, selling and conveying. Second. To the payment of any amounts that may have been expended, or that may then be necessary to expend in paying insurance, taxes, or other incumbrances, with interest thereon. Third. To the payment of said notes in full, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale, and, Fourth. The balance, if any, to be turned over to the said Charles D. Woodson; and I further agree that said J. G. Chamberlain, his agents or

assigns, may bid at said sale and purchase said property, if the highest bidder therefor.

Witness my hand and seal this 28th day of October, A. D. 1889. CHAS. D. WOODSON. (L. S.)

The State of Alabama, }
Jefferson County. }

For value received, I hereby waive and renounce all and any right of redemption, equitable or otherwise, that I may have to redeem said above described real estate in event the same shall be sold under foreclosure. The above described land is subject to vendor's lien, and to redemption by Drennan of Birmingham, as purchaser from Royster & Martin.

Witness my hand and seal this 27 day of November, 1889.

CHAS. D. WOODSON. (L. S.)

State of Alabama, }
Colbert County. }

I, L. W. Dimick, a notary public in and for said State and county, hereby certify that C. D. Woodson, whose name is signed to the foregoing conveyance, who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand this 28th day of November, 1889.

(Seal) L. W. DIMICK, N. P.

State of Alabama, }
Jefferson County. }

I, Edward T. Martin, a notary public in and for said county, in said State, hereby certify that Charles D. Woodson, whose name is signed to the foregoing conveyance, who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand this 28th day of October, 1889.

EDWARD T. MARTIN, Notary Public.

Endorsed: Mortgage deed. Chas. D. Woodson to Jacob G. Chamberlain, receiver.

The State of Alabama, }
Jefferson County. }

I, M. T, Porter, judge of the probate court of said county,

hereby certify that the foregoing conveyance was filed for registration in this office on the 28th day of October, 1889, and was recorded in Vol. 135, Record of Deeds, pages 56, 57 and 58, on the 8 day of November, 1888.

Given under my hand at this office this 8 day of November, 1889. M. T. PORTER,
Judge of Probate.

The State of Alabama, }
Colbert County. }

Know all men by these presents, that I, Jacob G. Chamberlain, as receiver for the Sheffield and Birmingham Coal, Iron and Railway Company, by virtue of orders and decrees of the honorable circuit court of the United States for the northern district and division of Alabama, at Huntsville, in the case of the Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company and another, do hereby sell, transfer, assign and make over to the Alabama Iron and Railway Company, all the right, title, interest, claim and demand, in law or in equity, of myself, as receiver aforesaid, to the following, to-wit:

A mortgage made by Chas. D. Woodson to Jacob G. Chamberlain, receiver, on the 14th day of October, 1889, recorded in the probate court of Jefferson county, Ala., on the 8th day of November, 1889, in Vol. 135, Record of Deeds, pages 56, 57 and 58, which mortgage was given to secure a note made by said Chas. D. Woodson to said Chamberlain, receiver, upon the following real estate lying in Birmingham, Jefferson county, Ala.: All of block No. two hundred and nine (209), lying between Twenty-Sixth and Twenty-Seventh streets, and Eighth and Ninth avenues, north, according to the present survey of the Elyton Land Company's map.

In witness whereof, I have hereunto set my hand this 1st day of September, 1890. JACOB G. CHAMBERLAIN.

State of Alabama, }
Colbert County. }

I, R. H. Wilhoyte, a notary public in and for said State and county, hereby certify that Jacob G. Chamberlain, whose name is signed to the foregoing conveyance, and who is known to me, acknowleded before me on this day that, being informed of the contents of the foregoing conveyance, he ex-

ecuted the same voluntarily, on the day the same bears date.
Given under my hand this the 1st day of September, 1890.

R. H. WILHOYTE,
Notary Public.

(Seal of Notary.)

State of Georgia,
Fulton County.

I, N. A. Brown, a notary public in and for said State and county, do hereby certify that I have read and compared the foregoing six (6) pages of typewritten matter with the original mortgage deed of Charles D. Woodson to Jacob G. Chamberlain, receiver; and with the transfer of Jacob G. Chamberlain to Alabama Iron and Railway Company thereto annexed, and find the same full, complete and accurate copies of the aforesaid two papers.

In witness whereof, I have hereunto set my hand and seal of office this 7th day of January, 1892.

N. A. BROWN,
N. P., Fulton Co., Ga.

(Seal)

EXHIBIT C.

Filed with answer of Respondents, made 19 Feby., 1892.

The State of Alabama,
Colbert County.

Know all men by these presents, That whereas, the undersigned, Charles D. Woodson, of Sheffield, Alabama, is justly indebted to Jacob G. Chamberlain, receiver, in the sum of thirty-three thousand three hundred and thirty-five dollars ($33,335.00) due by two promissory notes, one for the sum of twenty-three thousand and five hundred dollars, and one for the sum of nine thousand eight hundred and thirty-five dollars, both notes dated 14 October, 1889, at Sheffield Ala., and both signed by First National Bank of Sheffield, and by said C. D. Woodson, and payable one day after date thereof: and whereas, the said Charles D. Woodson is desirous of securing the prompt payment of said notes when same fall due. Now, therefore, in consideration of said indebtedness

and to secure the prompt payment of the same at maturity, I, said C. D. Woodson, have bargained and sold, and do hereby grant, bargain and sell to J. G. Chamberlain, receiver, lots one and two in block No. two, in the city of Sheffield, in Colbert county, Alabama, according to a map and survey made by Chas. Boeckh, C. E., and filed for record in the office of the judge of the probate court of said Colbert county.

All the undivided one-half interest in and to the south half of the east half of the northwest quarter (S. one-half of E. one-half of N. W. one-quarter) of section three, township four, range three west, lying in Colbert county, Alabama, and containing forty acres more or less.

Warranted free from all incumberances, and against any adverse claims whatever.

To have and to hold the above granted premises to said J. G. Chamberlain, receiver, his successors and assigns forever, and for the purpose of further securing said notes, I do hereby agree to pay all taxes or assessments when imposed legally upon said premises, and should I make default in payment of same, the said J. G. Chamberlain, receiver, may at his option pay off the same.

Upon consideration, however, that if said C. D. Woodson, or said First National Bank, shall pay said notes and re-imburse said J. G. Chamberlain, receiver, for any amount he may have expended for taxes and interest thereon, then this conveyance to be null and void: But should default be made in payment of any sum expended by said J. G. Chamberlain, receiver, or should said notes or any part thereof remain unpaid at maturity, or should the interest of said Chamberlain or his successors or assigns become endangered by reason of the enforcement of any prior lien or incumberance thereon, so as to endanger the debt hereby secured, then in any one of said events, the whole of said indebtedness shall at once become due and payable, and this mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the said J. G. Chamberlain, receiver, his successors, agents or assigns, shall be authorized to take possession of the premises hereby conveyed and after giving fifteen days notice of the time, place and terms of sale by publication once a week for two weeks in some newspaper published at

Sheffield, Alabama, in said county and state, to sell the same in front of the court house door of said county, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First, to the expenses of advertising, selling and conveying; second, to the payment of any amounts that may have been expended, or that may then be necessary to expend in paying insurance, taxes, or other incumbrances, with interest thereon; third, to the payment of said notes in full, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and fourth, the balance, if any, to be turned over to the said Charles D. Woodson; and I further agree that said J. G. Chamberlain, and his agents, or assigns, may bid at said sale and purchase said property, if the highest bidder therefor.

Witness, my hand and seal this the 9th day of November, A. D. 1889. CHAS. D. WOODSON, [L. S.]

Witnesses:

HENRY B. TOMPKINS.

The State of Alabama,
Colbert County.

For value received I hereby waive and renounce all and every right of redemption, equitable or otherwise, that I may have to redeem said above described real estate in event the same shall be sold under foreclosure.

Witness, my hand and seal this—— day of November, 1889.

CHAS. D. WOODSON, [L. S.]

State of Alabama,
Colbert County.

I, L. W. Dimick, notary public in and for said state and county, hereby certify that C. D. Woodson, whose name is signed to the foregoing conveyance and waiver of redemption, who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand this 28th day of November, 1889.

(Seal) L. W. DIMICK, N. P.

State of New York,
County of New York.

I, Henry B. Gibbon, a notary public in and for said county,

in said state, hereby certify that Chas. D. Woodson, whose name is signed to the foregoing conveyance, who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he executed the same voluntarily, on the day same bears date.

Given under my hand this 9th day of November, 1889.

HENRY B. GIBBON,
Notary Public.

(Seal)

Endorsed:

State of Alabama,
Colbert County.

I, John A. Steele, judge of the probate court of said county, hereby certify that the foregoing conveyance was filed for registration in this office on the 12th day of Nov., 1889, and was recorded in Vol. No. 3, record of mtgs., pages 262-3-4, on the 13th day of Nov., 1889.

JOHN A. STEELE,
Judge of Probate.

Written with red ink across face of mortgage: Satisfied by sale of the property, 30th day of October, 1890.

J. G. CHAMBERLAIN,
Late Receiver,
Nov. 6th, 1890.

The State of Alabama,
Colbert County.

Know all men by these presents, That I, Jacob G. Chamberlain, as receiver for the Sheffield and Birmingham Coal, Iron and Railway Company, by virtue of orders and decrees of the honorable circuit court of the United States for the northern district and division of Alabama, at Huntsville, in the case of the Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company and another, do hereby sell, transfer, assign and make over to the Alabama Iron and Railway Company, all the right, title, interest, claim and demand, in law or in equity, of myself, as receiver aforesaid, to the following, to-wit:

First. A mortgage made by Chas. D. Woodson to Jacob G. Chamberlain, receiver, on the 9th day of November, 1889, recorded in the probate court of Colbert county, Ala., on the

13th day of November, 1889, in Vol. 3 Record of Mortgages, pages, 262–3–4, which mortgage was given to secure a note made by said Chas. D. Woodson to said Chamberlain, receiver, upon the following real estate lying in Colbert county, Ala.:

Lots one and two in block two of the city of Sheffield, according to map and survey made by Chas. Boeckh, C. E., and filed for record in the office of the judge of probate for Colbert county.

All the undivided one-half interest in and to the south half of the east half of the northwest quarter of section 3, township 4, range 11 west, containing twenty acres, more or less.

In witness whereof, I have hereunto set my hand this the day of Sept. 1st, 1890.

JACOB G. CHAMBERLAIN.

State of Alabama, }
Colbert County. }

I, R. H. Wilhoyte, a notary public in and for said State and county, hereby certify that J. G. Chamberlain, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing conveyance, he executed the same voluntarily, on the day the same bears date.

Given under my hand and seal this the 1st day of September, 1890.

R. H. WILHOYTE,
Notary Public.

[Seal.]

(Oct. 14th, '90.)

MORTGAGE SALE.

The State of Alabama, }
County of Colbert. }

Under and by virtue of the power of sale contained in a certain mortgage executed to J. G. Chamberlain, receiver, by Chas. D. Woodson, on the 9th of November, 1889, and which mortgage was filed for record in the office of the judge of probate for Colbert county, Ala., on the 12th day of November, 1889, and was duly recorded in Volume 3 Record of Mortgages, pages 262–3–4, on the 13th of November, 1889, in said office of the judge of probate of Colbert county, Ala., and which said mortgage has been duly transferred and assigned

by J. G. Chamberlain, receiver, to the Alabama Iron and Railway Company, under and by virtue of the decrees and orders of the honorable circuit court of the United States for the northern district and division of Alabama, the undersigned, transferree of the said mortgage, will proceed to sell, on Thursday, the 30th day of October, 1890, in front of the court house door of said Colbert county, at public outcry to the highest bidder for cash, between the legal hours of sale, the following described real estate, all situated in the county of Colbert, State of Alabama, to-wit: Lots one and two in block two in the city of Sheffield, according to a map and survey made by Chas. Boeckh, duly filed for record in the office of the judge of probate of said Colbert county, Ala., and also, all the undivided one-half interest of said Chas. D. Woodson in and to the south half of the east half of the northwest quarter section three, township four, range eleven west, lying in Colbert county, Ala. Such sale being made to satisfy and pay off the amount of principal, interest and expenses of advertising, taxes, and attorneys or solicitor's fees, due under the terms of the notes and mortgage securing same, given by said Chas. D. Woodson to said J. G. Chamberlain, receiver.

J. G. CHAMBERLAIN, Receiver,
Alabama Iron & R'y Co., Transferree.
HENRY B. TOMPKINS, Attorney.

SALE OF COLLATERAL

By virtue of the transfer and assignment of certain notes hereinafter set forth as collateral to secure certain indebtedness, the Alabama Iron and Railway company, a corporation duly organized under the laws of the State of Alabama, will proceed on Thursday, the 30th day of October, 1890, at twelve o'clock noon, to sell at public outcry to the highest bidder for cash, at the door of the court house of Colbert county, Ala., in Tuscumbia, the following described collaterals:

(1) One note for $1,450, dated Sheffield, Ala., December 26, 1888, due four months after date to T. L. Benham, cashier, or order, signed Henry B. Tompkins, and endorsed T. L. Benham, cashier.

(2) One note for $1,604.10, dated Sheffield, Ala., February 14, 1889, due sixty days after date to T. L. Benham, cashier,

or order, signed Henry B. Tompkins, and endorsed T. L. Benham, cashier.

(3) One note for $1,000, dated Sheffield, Ala., February, 23, 1889, due four months after date to W. S. White, or order, signed Henry B. Tompkins, endorsed W. S. White and T. L. Benham, cashier.

(4) One note for $1,000, dated Sheffield, Ala., March 6, 1889, due four months after date to W. S. White, or order, signed Henry B. Tompkins, and endorsed W. S. White and Chas. D. Woodson, president.

(5) One note for $452.09, dated Sheffield, Ala., March 8th, 1889, due four months after date to T. L. Benham, cashier, or order, signed Henry B. Tompkins, and endorsed Chas. D. Woodson, president.

(6) One note for $1,500, dated Sheffield, Ala., March 16th, 1889, due four months after date to W. S. White, or order, signed Henry B. Tompkins, endorsed W. S. White and T. L. Benham, cashier.

(7) One note for $1,500, dated Sheffield, Ala., March 20th, 1889, due four months after date to W. S. White, or order, signed Henry B. Tompkins, and endorsed W. S. White, and Chas. D. Woodson, president.

ALABAMA IRON & RAILWAY COMPANY.

State of Alabama,)
Colbert County.)

This indenture, made and entered into this the 6th day of November, one thousand, eight hundred and ninety, between Jacob G. Chamberlain, late receiver of the Sheffield and Birmingham Coal, Iron and Railway Company, party of the first part; and the Alabama Iron and Railway Company, party of the second part, witnesseth:

Whereas, On the 9th day of November, 1889, the First National Bank of Sheffield, Ala., was indebted to Jacob G. Chamberlain, as receiver, in a large amount of money, which amount was afterwards ascertained to be seventy-three hundred and five and 29-100 ($7,305.29) dollars, with interest on said sum on and after the 30th day of October, 1889; and

Whereas, Chas. D. Woodson, president of said First National Bank of Sheffield, Ala., in order to secure said indebtedness executed to said J. G. Chamberlain, receiver, a mortgage upon certain real estate hereinafter described and set forth, situated in Colbert county, Ala., which mortgage was made on the 9th day of November, 1889, and recorded in the office of judge of probate of Colbert county on the 13th day of November, 1889, in volume 3, record of mortgages, pages 262-3-4; and

Whereas, At the same time, and also to secure said indebtedness, said Chas. D. Woodson, as president of said First National Bank, transferred to said J. G. Chamberlain, receiver, as collateral security, seven notes, all of which were then past due, and which are described as follows:

(1) Note for $1,450, dated Sheffield, Ala., December 26th, 1888, due four months after date, to T. L. Benham, cashier, or order, signed by Henry B. Tompkins, endorsed by T. L. Benham, cashier.

(2) Note for $1.604.18, dated Sheffield, Ala., Feby. 14, 1889, due sixty days after date, to T. L. Benham, cashier, or order, signed by Henry B. Tompkins, and endorsed by T. L. Benham, cashier.

(3) Note for $1,000, dated Sheffield, Ala., February 23, 1889, due four months after date to W. S. White, or order, signed by Henry B. Tompkins, and endorsed by W. S. White and T. L. Benham, cashier.

(4) Note for $1,000, dated Sheffield, Ala., March 6th, 1889, due four months after date, to W. S. White, or order, signed by Henry B. Tompkins, and endorsed W. S. White and Chas. D. Woodson, president.

(5) Note for $402.09, dated Sheffield, Ala., March 8, 1889, due four months after date, to T. L. Benham, cashier, or order, signed by Henry B. Tompkins, and endorsed by Chas. D. Woodson, president.

(6) Note for $1,500, dated Sheffield, Ala., March 16, 1889, due four months after date to W. S. White, or order, signed by Henry B. Tompkins, and endorsed by W. S. White and T. L. Benham, cashier.

(7) Note for $1,500, dated Sheffield, Ala., March 20th,

1889, due four months after date to W. S. White, or order, signed by Henry B. Tompkins, endorsed by W. S. White, and Chas. D. Woodson, president.

And whereas, On the 1st day of September, 1890, said J. G. Chamberlain, receiver, under and by virtue of orders and decrees of the honorable circuit court of the United States for the northern district and division of Alabama, at Huntsville, in the case of the Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company and another, did sell, transfer, assign and make over to said Alabama Iron and Railway Company, all the right, title, interest, claim and demand, in law or in equity, of said J. G. Chamberlain, as receiver, or of said Sheffield and Birmingham Coal, Iron and Railway Company, to said Alabama Iron and Railway Company, hereinafter more specifically to be described, as well as the seven notes hereinbefore set forth, and did transfer and assign said mortgage so made by Chas D. Woodson to J. G. Chamberlain, receiver, to said Alabama Iron and Railway Company;

And whereas, Said Alabama Iron and Railway Company, after due and legal advertisement, according to the terms of said mortgage, did proceed and expose for sale said real estate, as well as said seven notes, at the court house door of Colbert county, in Tuscumbia, on the 30th day of October, 1890;

And whereas, At said sale, said Alabama Iron and Railway Company, being the highest and best bidder, became and were the purchasers of said real estate and said notes, at and for the price of thirty-six hundred and ten dollars, as follows: (1) Lots one and two, in block two, in the city of Sheffield, Colbert county, Ala., according to a map and survey made by Chas. Boeckh, C. E, filed for record in the office of the judge of probate court of said Colbert county, were bid in by said Alabama Iron and Railway Company for the sum of $2,500; (2) All the undivided one-half interest in and to the south half of the east half of the northwest quarter, sec. 3, T. 4, R. 11 west, lying in Colbert county, Ala., containing twenty acres more or less, for said undivided one-half interest, were bid in by said Alabama Iron and Railway Company, at and for the sum of $1,000; (3) The foregoing described seven notes were

3610
2500
1000

bid in by said Alabama Iron and Railway Company, at and for the sum of ~~$1.10~~ $ 110.00

Now, for and in consideration of the above stated premises, and the further sum of one dollar to me in hand paid, at and before the sealing and delivery of this deed, I, Jacob G. Chamberlain, late receiver of the Sheffield and Birmingham Coal, Iron and Railway Company, do hereby sell, convey, release, and quit claim unto the said Alabama Iron and Railway Company, all the above described real and personal property, consisting of said two lots in the city of Sheffield, and said undivided one-half interest in forty acres of land in Colbert county, and said seven promissory notes.

To have and to hold the above described property, real and personal, unto the said Alabama Iron and Railway Company, its assigns and successors, in fee simple forever.

In witness whereof, I have hereunto set my hand and seal this the day and year first above written.

JACOB G. CHAMBERLAIN. (L. S.)

The State of Alabama,
Colbert County.

I, R. H. Wilhoyte, a notary public in and for said county, in said State, hereby certify that Jacob G. Chamberlain, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand, this the 6th day of November, 1890.

R. H. WILHOYTE,
Notary Public.

[Seal]

State of Alabama,
Colbert County.

I hereby certify that the within conveyance was filed in my office for record on the 6th day of Nov., 1890, at — o'clock,— M., and duly recorded in volume N. of Deeds, page 45-6-7-8, on the 7th day of Nov., 1890.

JOHN A. STEELE,
Judge of Probate.

State of Georgia,
Fulton County.

I, Nathan A. Brown, a notary public in and for said State and county, do hereby certify that I have read and compared the foregoing nine (9) pages of typewritten matter with the original mortgage deed of Chas. D. Woodson to Jacob G. Chamberlain, receiver; and with the transfer of Jacob G. Chamberlain to Alabama Iron and Railway Company thereto annexed; also advertisement of mortgage sale, and sale of collateral securities; and also deed from Jacob G. Chamberlain to Alabama Iron and Railway Company; and find the same full, complete and accurate copies of the aforesaid four papers.

In witness whereof, I have hereunto set my hand and seal of office this day of February, 1892.

NATHAN A. BROWN,
Notary Public,
Fulton County, Ga.

REPORT OF MILTON HUMES, ESQ., SPECIAL MASTER

In the matter of the intervention of the Anniston Loan and Trust Company.

In this cause the issues made up on the intervention of the Anniston Loan and Trust Company were, in pursuance of petition of parties in interest, by their solicitors of record, referred by order of Circuit Judge, made February 26, 1891, to D. D. Shelby, Esq., as special master to take evidence, investigate and report. The said special master took all the testimony relating to said intervention, and after his having done so, it appearing that he was the attorney for R. W. Austin, as receiver for the First National Bank of Sheffield, and that said bank might be in some way interested in the result of the intervention suit, and that he was unwilling to make a final and full report as special master by reason of such interest of the bank, therefore the matter of the intervention was, upon the application and agreement of said parties, by their said solicitors, referred by order of the court, Boarman, Judge, presiding, made January 19th, 1892, to the undersigned,

as special master in the place of D. D. Shelby, Esq., with authority to receive from him all the records, depositions, papers and evidences relating to the intervention, and proceed to make a full report thereon just as if he had originally taken charge of the matter as special master. It was further ordered that all further and other proceedings in the cause should be the same as if said Humes, as special master, had had charge of said cause from its inception; and that hearing upon such exceptions as may be filed by either party to his report as special master may be had before the circuit judge upon ten days' notice by either party in interest to the other, and the judgment of said judge be considered as if made by the court in term time.

The intervenor submitted the cause upon the following pleadings and testimony:

1. The original petition and intervention filed August 15th, 1890; the amended petition and intervention filed November 12th, 1890; and the amended petition and intervention filed January 17th, 1892.

2. The original bill of complaint in cause No. 150, and the "Exhibits A" and "B" thereto in the case of the Central Trust Co. vs. the Sheffield and Birmingham Coal, Iron and R'y Co., said exhibits being a mortgage executed January 2d, 1888, and a mortgage executed June 1st, 1888, to secure certain bonds issued by said company.

3. Five receiver's certificates numbered 8, 9, 10, 11 and 12 respectively, of $5,000 each, signed by Jacob G. Chamberlain, receiver.

4. The original petition filed by Jacob G. Chamberlain, receiver, June 15th, 1889, asking authority to issue receiver's certificates, and the decree of the court in said cause of July 11, 1889, authorizing the issuance of said receiver's certificates. The decree of foreclosure, requiring the payment of the receiver's certificates in controversy, of December 3d, 1889. The report of the sale of the property of the Sheffield and Birmingham Coal, Iron and Railway Company by D. D. Shelby, special master, to Napoleon Hill, trustee, and James C. Neely, trustee, April 21st, 1890. The decree of the court confirming said sale conditionally, as therein appears, May

10th, 1890. The deed of D. D. Shelby, special master, to Napoleon Hill, trustee. The deed from Napoleon Hill, trustee, to the Alabama Iron and Railway Company. The papers showing the incorporation of the Alabama Iron and Railway Company. The report and sale of J. G. Chamberlain, receiver of the notes and bills, choses in action, mortgages and other effects in his hands as receiver. Deed from H. B. Tompkins to Chas. D. Woodson, executed January 7th, 1888, block 209 in the city of Birmingham, Alabama, lying between 26th and 27th streets and 8th and 9th avenues, north. Mortgage from Charles D. Woodson to Jacob G. Chamberlain, receiver, executed October 28th, 1889, on the same property, to secure an indebtedness of $33,335.00 due by two notes, one for $23,500.00 (proceeds of receiver's certificates), and $9,835.00 (proceeds of two acceptances). Additional mortgage to secure the proceeds of said receiver's certificates and the proceeds of said acceptances executed November 9th, 1889.

5. The deposition of T. L. Benham, O. H. Parker and J. R. Jones, and "Exhibit A" to deposition of T. L. Benham. Additional examination of T. L. Benham, J. R. Jones and R. W. Austin. The deposition of H. E. Garth. On objections to testimony noted by commissioner when same was taken, and on additional objections filed to testimony of H. B. Tompkins taken in Cincinnati. Deed to James C. Neely, trustee, from Shelby, master. Deed to Townley Coal and Coke Co. from Neely, trustee. Paper showing incorporation of Townley Coal and Coke Co. With leave to refer to any papers in cause 150 of Central Trust Co. vs. S. & B. C., L. & R'y Co.

The respondents submitted the cause upon the following pleadings and testimony:

(a) Petition of J. G. Chamberlain, receiver, for modification of final decree, filed January 8th, 1890.

(b) Affidavits and exhibits showing service of this petition for modification of decree upon Chas. D. Woodson.

(c) Order of court granting modification of decree.

(d) Order dirrcting receiver to turn over property, made June 12th, 1890.

(e) Final statement of receiver of assets and liabilities, filed in clerk's office 4th August, 1890.

(f) Order discharging receiver, dated 19th August, 1890.

(g) Copy of mortgage from C. D. Woodson to J. G. Chamberlain, receiver, on Birmingham lot No. 209, dated October 28th, 1889, wherein is shown endorsement of C. D. Woodson, made on 27th November, 1889, in reference to vendor's lien existing upon that property, and which endorsement is not upon copy of mortgage furnished by intervenor. This paper also marked "Exhibit B" and filed with answer of respondent.

(h) Proceeding in equity in city court of Birmingham foreclosing vendor's lien by Tompkins against Woodson on property mortgaged by Woodson to Chamberlain.

(i) Foreclosure proceedings under mortgage from Woodson to Chamberlain, dated November 9th, 1889, which mortgage is endorsed by the receiver, but foreclosure proceedings are not. This mortgage upon Sheffield property, and which mortgage, together with foreclosure proceedings and deeds thereunder, made by Chamberlain to Alabama Iron and Railway Company, are introduced as "Exhibit C" to the answer of respondents.

DEPOSITIONS INTRODUCED BY RESPONDENTS.

(a) Original and supplemental depositions of Henry B. Tompkins, taken on 7th July, 1891, before the special master at Huntsville; and on July 17th, 1891, by consent, in the presence of counsel for intervenor, at Cincinnati, Ohio.

(b) Depositions of J. G. Chamberlain, receiver, taken on July 17th, 1891, at Cincinnati, Ohio, and the exhibits thereto attached.

(c) Deposition of J. B. Carrington, taken on 14th September, 1891, with copy of paper signed by Woodson thereto attached and duly certified as being taken from the original.

All of the evidence offered by the parties as shown by the above notes of submission, was received and considered by the special master, subject to the exceptions and objections of the parties respectively, together with the exceptions thereto, are here now submitted to the court for consideration.

The decretal order of reference directs the special master to take the evidence, and also to investigate and report thereon. It is understood from this that the court desires the benefit of the special master's inquiry into and opinion upon the issues

involved. With this object in view, the special master submits the following:

From the evidence in the cause it appears that Chamberlain, the receiver, by an order of the court duly and regularly made, issued receiver's certificates for an amount in the aggregate of $150,000. Of these certificates five for five thousand dollars each, Nos. 8, 9, 10, 11 and 12 inclusive, the receiver placed in the hands of C. D. Woodson, who was at the time president of the First National Bank of Sheffield, to sell. These five certificates, copies of which are in evidence, are the subject of the controversy in this suit. They show that they are made and issued in pursuance of the order of the court authorizing them, and that order, bearing date July 11, 1889, is also in evidence, and by its terms directs that the certificates shall bear a rate of interest not exceeding seven (7) per cent.; that they shall fall due from time to time in thirty-six (36) months after date thereof; and that the receiver is authorized and empowered to sell them at not less than par, less a reasonable amount to be paid for the negotiation of the same, and the proceeds to be applied to the purposes named in the decree. The five certificates involved in this controversy bear date "Sheffield, Alabama, October 10, 1889," are payable thirty-six months after date at the National Park Bank in the City of New York, to the bearer, with interest from date, at the rate of six per cent. per annum, payable semi-annually. Woodson also got from the receiver three other of the series of certificates, viz., Nos. 1, 2 and 3, aggregating fifteen thousand dollars; and although Chamberlain, the receiver, in his testimony in this cause is examined and testifies about them, his testimony is not considered at all material or pertinent to any inquiry involved in this investigation. Chamberlain in his testimony says that he sold the three last named certificates to Woodson at six per cent. discount in payment of an indebtedness of the receiver to the bank of which Woodson was president, the First National Bank of Sheffield. In reference to the five certificates the subject of this controversy, the evidence shows that on October 13, 1889, which was Sunday, Chamberlain, the receiver, sent a telegram from Atlanta, Ga., to Woodson at Fifth Avenue Hotel, New York, in the following langnage:

"13th Oct., 1889.

To Charles D. Woodson,

Care Fifth Avenue Hotel, New York, N. Y.:

Do not place receiver's certificates under any circumstances, as I have given option for their sale. Also return acceptance of ten thousand dollars to me at Sheffield at once. Answer here. J. G. CHAMBERLAIN."

On the same day Woodson replied to this telegram as follows:

"New York, 13.

To J. G. Chamberlian,

Care H. B. Tompkins, Atlanta:

Telegram received. Will return you the papers as requested.

C. D. WOODSON."

In violation of the instructions contained in this telegram to him, Woodson on October 14th, 1889, sold in New York these five certificates to H. E. Garth for D. T. Parker, said Garth in his testimony, says: "Either for $17,000 or seventy cents on the dollar." And D. T. Parker on the 21st and 22nd of October, 1889, O. H. Parker in his testimony says, sold them to said O. H. Parker, president of the Anniston Loan and Trust Company, for said company, for $22,500, being ninety cents on the dollar. D. T. Parker at the time of said sale by him was a stockholder and one of the directors of the Anniston Loan and Trust Company. There is no question, and it is so conceded by counsel for intervenors, that neither D. T. Parker by his purchase, or the intervenor by its subsequent purchase from him, acquired any right to these certificates, because they were purchased from Woodson when Woodson had no authority to sell, and at a price less than that authorized by order of the court; and although the intervenor may have paid full value and had no actual or express notice of the vice of the title of its vendor, nevertheless it took subject to what infirmity attached to it. If the testimony in the cause stopped here, counsel for the intervenor admit it would have no showing for relief. But they say, the evidence shows that the proceeds came to the hands of the receiver, and that he and the court and the parties in interest, by their subsequent conduct and with full knowledge of this unlawful and

unauthorized disposition of these certificates by Woodson ratified the same.

The circuit judge in his opinion overruling the demurrers to the petition of the intervenor, says: "The case seems to turn upon the fact whether or not the proceeds of the five receiver's certificates sued upon by the intervenor came to the hands of the receiver." This, in the opinion of the special master, is the only question in the case, because he considers it settled law on this subject that the purchaser is not bound to see that the proceeds are properly taken care of and used by the receiver for the benefit of the estate, and that even where there is a disposition of the certificates at a price less than that prescribed by the terms of the order, if the receiver receives the proceeds of sale or any portion thereof, to the extent of the amount so received the trust estate is liable to the bona fide holder of the certificates. In Central National Bank vs. Hazard et al., 30 Fed. Rep., 484, Wallace, J., says: "Receiver's certificates are not commercial paper, and the holder takes them subject to all equities between the original parties, even though he acquires them for value and without notice; and when they are negotiated at a discount, which the receiver is not authorized to allow, a bona fide holder will only be protected to the amount actually advanced by the first purchaser." This is a correct statement of the law on this subject, and so recognized by the authorities, judicial and textual.

Beach on Rec., Sec. 396 & N., citing authorities.
High on Rec., Sec. 398 & N., citing authorities.

Mr. High, in his well considered treatise on the subject, says: "Receiver's certificates, being merely an evidence of indebtedness issued for a special purpose, under a judicial order, and payable out of a special fund, are not negotiable instruments or commercial paper in the sense that innocent purchasers for value will be protected as against the equities existing between the original parties. And while they may be transferred by assignment, or even by delivery if payable to bearer, the purchaser or assignee can only recover upon them to the extent that the original payee could have recovered. It follows, therefore, that the assignor or endorser of

know the legality of the purchase of certificates Nos. 1, 2 and 3 have never been doubted or questioned.

I have already stated the price and about the time when the certificates were purchased. As nearly as I can remember, the first were bought the last of September and the others the middle of October, 1889. So far as I know, the interest on Nos. 1, 2 and 3 has been paid regularly; I never heard to the contrary.

I cannot say how long I knew Mr. Woodson before the purchase of the certificates; probably a year. He was engaged in the banking business. I heard that he had been in the banking business a number of years in Atlanta, Ga., and Sheffield, Ala. I cannot say what his standing was in banking and financial circles in the city of New York. He informed me that his bank was hard up, but was perfectly good. So far as I know, everybody regarded him as thoroughly honest and reliable.

At the time Mr. Parker purchased his certificates he was debating whether he would take some Ensley Land Company notes that he expected would pay him about the same rate of interest, but he decided to take these certificates because he liked the security better."

So, in reference to the testimony of O. H. Parker as to his purchase from D. T. Parker, he says:

"Q. You are president of the Anniston Loan and Trust Company? A. Yes, sir.

Q. Who owns these receiver's certificates, numbered 8, 9, 10, 11 and 12, issued October 10th, 1889, and signed by J. G. Chamberlain, receiver? A. The Anniston Loan and Trust Company.

Q. From whom did you purchase them? A. From D. T. Parker.

Q. What price did you pay for them? A. 90 cents.

Q. How much money? A. $22,500."

Q. When you purchased these certificates as president of the Anniston Loan and Trust Company, did the company have any notice of any defence against them or any irregularity in the sale. A. None whatever. We got notice when the coupons were demanded in the following April, on the 10th, I think. Our New York correspondent presented them

at the bank at which the interest was payable; that was the first we knew of it."

Of course this evidence only goes to the question of the bona fides of the purchase of the certificates by D. T. Parker from Woodson and of the claim of the intervenor as a bona fide holder. And it is received and considered for this purpose only to this extent, not as an excuse or protection for the purchase of these certificates from an unauthorized agent upon terms and at a price not authorized by the order of court.

It being thus shown that the intervenor is a bona fide holder for value, and that the first purchase was in like good faith, for value, then, upon the authoritives above referred to, the sole remaining question is, did the receiver ratify the disposal by Woodson of these certificates by receiving from him the whole or any part of the purchase price thereof? If he did, then the intervenor is entitled to relief to the extent of the amount so actually received by the receiver. In other words, using the clear and forcible language of the circuit judge in his opinion on the demurrer, "the case turns upon the fact whether or not the proceeds of the five receiver's certificates sued upon by the intervenor came to the hands of the receiver."

First, as to the testimony on this point, the intervenor offers the testimony of the witnesses T. L. Benham, J. R. Jones and R. W. Austin, and the following documentary evidence: Mortgage from Charles D. Woodson to Jacob G. Chamberlain, receiver, executed Oct. 28th, 1889, on real estate in Birmingham, to secure indebtedness of $33,335.00 due by two notes, one for $23,500, proceeds of receiver's certificates, and $9,835, proceeds of two acceptances, both these notes signed First National Bank of Sheffield and C. D. Woodson; mortgage from Charles D Woodson to Jacob G. Chamberlain, receiver, executed Nov. 9, 1889, on real estate in Sheffield and Colbert county, to secure same indebtedness; assignment by said bank to Chamberlain as receiver, as further security for said indebtedness, of seven notes aggregating $10,000, given by Henry B. Tompkins and J. M. White to said bank; assignment by Chamberlain, as receiver, after sale under decree of foreclosure

in this case of the property of the Sheffield and Birmingham Coal, Iron and Railway Company to the Alabama Iron and Railway Company, of said mortgages and notes as purchaser of said property sold under said foreclosure proceedings; and sale by said Alabama Iron and Railway Company of said real estate at Sheffield and in Colbert county, under the power contained in said mortgage as transferee thereof, and also sale by same of transferee thereof of said notes. At said sales said lands were sold for $3,500, and said notes $110, the Alabama Iron and Railway Company being the purchaser at said sale, as shown by deed of Chamberlain, as receiver, to said company, in evidence in the cause, bearing date Nov. 6, 1890. Intervenor also offers in this connection the decree of foreclosure of Dec. 3d, 1889, requiring payment of the receiver's certificates in controversy here; the report of the sale of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, by D. D. Shelby, special master, to Napoleon Hill, trustee, and J. C. Neely, trustee, April 21, 1890. The decree of the court of date May 10, 1890, confirming said sale, among other things, charging the property and its proceeds with the payment of these five certificates. The deed of Special Master Shelby to Napoleon Hill of the property sold under said decree of foreclosure, and the deed of Hill, trustee, to the Alabama Iron and Railway Company, and the papers showing its incorporation. Also report and sale by Chamberlain, as receiver, of the Tompkins and White notes and the Sheffield and Colbert county real estate; and the deed from Tompkins to Woodson, executed January 7th, 1888, conveying the real estate which was subsequently by said mortgage conveyed to Chamberlain, as receiver, by Woodson.

All of this evidence is objected to by respondents by general objection as illegal and inadmissible. Without passing specially upon these grounds of objection in their application to each item and portion of this evidence, in the opinion of the special master it is admissible and received by him to be considered for what it is worth upon this main and most important question of fact in the case, that is, as to whether the proceeds of the certificates came to the hands of the receiver, and whether his conduct and that of the parties in interest and the action of the court thereon had the effect

of a ratification of the unauthorized sale of the certificates by Woodson, and to render the same a valid and legal claim against the property and the purchasers and holders of it.

Testing the relevency of this evidence by this legal aspect of the case, let us see what the evidence is and what it amounts to as regards the legal purpose and object of its introduction. The witness Benham testified that he was cashier and C. D. Woodson president of the said Sheffield Bank from its organization, January, 1887, until its suspension which occurred November 29, 1889. This witness says on his examination in chief, that Woodson made a deposit of money in the bank to the credit of Chamberlain, as receiver, of $17,000 on October 22d, 1889, another of $6,500 November 5th, 1889; that he, witness, wrote the deposit slip for the $17,000 and he thinks for the $6,500 also, and that Woodson told him at the time that these deposits were the proceeds of the receiver's certificates; that the bank book shows these entries to the credit of Chamberlain, receiver; that it is the custom in banking for the depositor to have what is called a pass-book; that Chamberlain, as receiver, had an account on the books of the bank and had one of these pass-books, and that these two items, one for $17,000 and the other for $6,500, were credited on his pass-book; that Chamberlain, as receiver, had to his credit on the books of the bank Nov. 5th, 1889, $25,278.83, that this included the item of $17,000, but not the item of $6.500, that this last item was placed on the pass-book by the instance of Woodson, and that Woodson did not exactly explain the debit entry to it; that there were other deposits that Chamberlain, receiver, had made in addition to these between the 10th of October and the 5th of November; that he deposited $4,060.28 October 28, and same date $844.45; that these were all the deposits between those dates, and no deposits afterwards; that after the 9th of November, checks by Chamberlain, receiver, on the following dates and for the following amounts were honored, viz: Nov. 13th, $150.08, Nov. 14th, $235.26; Nov. 15th, $38.43; Nov. 22d, $123.37; Nov. 25th, $20.40 and Nov. 26th, $31.00; that the receiver was overdrawn in the bank Sept. 19, $7,972.50; that the receiver checked out between Oct. 22d and the time of the suspension

of the bank, $2,859.18, and that his check out October 22d, for $576.46 was paid that day.

On cross-examination the witness says that he cannot state definitely that the $17,000 was on the pass-book; that it was not a deposit of $17,000 in cash, but was entered to the credit of the receiver by advice of Woodson, and debited to New York correspondents of the bank, except $500, being individual check of Woodson, as follows: $3,500 debited to the Central National Bank of New York; $10,000 debited to W. L. Moody and Company; and $3,000 debited to the Berney National Bank of Birmingham. This witness fails to show from what source the deposit of $6,500 was obtained, and there is no evidence in the cause showing that it represents any deposit of that amount made in the bank at that time in any way. On rebuttal this witness says that he knows the $17,000 deposit was on the pass-book when it was balanced, which was on Oct. 29th; that this $17,000 was placed to the credit of the bank in New York, with the exception of the $500; that the accounts of the New York banks reconciled with his bank's account exactly, and that these reports showed his (witness') bank had been credited with that amount.

This witness was afterwards re-examined, and upon re-examination testified that he had seen the pass-book of the receiver since his first examination; it is shown to him, and he testifies to it, and it shows the entry of these two items of $17,000 Oct. 22d, and $6,500 Nov. 5th; that the deposit of $17,000 was made up of several items. The items were $6,000 and $4,000 charged to W. L. Moody and Company, of New York, $3,000 in National Bank of Republic transferred by him to Berney National Bank of Birmingham, and that bank sent to First National Bank of Sheffield $3,000 in gold, which was received, and $1,500 and $2,000 charged to the Central National Bank of New York. The total of these amounts aggregates $16,500, which, with the $500 individual check of Woodson, makes $17,000. The witness repeats and reiterates that these several amounts were recognized and reported by the banks upon which they were drawn, and that these monthly accounts to and settlements with his bank showed that these amounts were actually deposited to its credit in said banks respectively, and that his bank got the benefit of them. This is substan-

tially all the testimony of this witness bearing upon this point.

The next witness, J. R. Jones, testifies that he resided at Sheffield, and was the individual book-keeper for the First National Bank of Sheffield in October and November, 1889; that it was the custom of the dealings between the bank and customers to have a pass-book, the entries on which corresponded with the entries on the ledger; he examines the ledger, that it shows these credits to the receiver on Oct. 22d, the largest being for $17,000; that item was entered to Chamberlain's credit as receiver on his pass-book, that he has seen the pass-book, and balanced it Oct. 29, 1889, and it balanced with the ledger account of the bank; that the invariable rule was to do that, and the officers of the bank never let a pass-book leave the bank unless it did balance—"it had to reconcile with the ledger"; that the balance to the credit of the receiver Oct. 29, 1889, was $26,189.13, and that he noticed an entry of $6,500 deposited to the receiver's credit, but did not remember if that was entered on the pass-book, as he did not balance it on November 29th. On re-examination this witness said that he had seen the reports of the banks of New York mentioned by Mr. Benham in his deposition, that he knows of the $3,000 in gold being received from the Berney National Bank from the entry on the books, and he saw the entries on the books of the bank showing that these deposits were made in New York and placed to the credit of the Sheffield bank from the reports received from the banks in New York; that "the bank books show that that much money was deposited to the credit of the First National Bank of Sheffield in New York, and that the reports from those banks show that their books reconcile with his bank books as to those items." He is shown and identifies pass-book of the receiver, he made it out and it is in his handwriting; that it balanced with the bank books to a cent, and that these items were credited thereon at the time they purport to be entered. This was substantially all the testimony of this witness.

The next witness was R. W. Austin, who testifies that he is the receiver of the First National Bank of Sheffield; that after his qualification as receiver, Mr. Chamberlain, as receiver, presented a claim against the bank to him, as receiver of the bank, for $30,805.29, due on deposit account on the day the

bank suspended, Nov. 29, 1889, being the balance to his credit as shown by his pass-book; that the claim was submitted on a blank form which was prepared by the controller of the currency, this form being in the nature of an affidavit, stating that the man who presents it or signs it is a creditor of the bank; it was sworn to before a notary public, and stated there was a balance due him as a creditor of the bank of $30,805.29; that he took charge of the bank Jauuary 2d, 1890, and that Chamberlain presented this claim among the first of the creditors, that he does not remember the exact date, somewhere from the middle to the last of January; that shortly after presenting this first account Chamberlain went to the office of witness and stated he wished to withdraw it and substitute another proof of claim, and accordingly on February 22d filed another claim, No. 2, for $804 29; that when Chamberlain first presented his first claim he had his pass-book examined, balanced and compared with the individual ledger, and found it correct as far as the face of the book was concerned, but witness declined to give him a receiver's certificate of indebtedness unti he surrendered to witness the Tompkins' notes and the mortgages on real estate in Birmingham, Sheffield and Colbert county, the notes being taken without authority from the officers of the bank, and the mortgages given as security for his deposit account, and that his instructions were from the department not to issue certificates of indebtedness in cases of this kind until all collaterals and securities were surrendered; that Chamberlain declined to surrender the notes and mortgages, and consequently witness refused to issue him a certificate; that after his refusal to issue Chamberlain a certificate upon his claim number 1, he presented claim number 2, claiming that it was balance due on deposit account, and also $1,100, amount agreed to be paid by the First National Bank on commission; witness says he asked Chamberlain why he included this item of $1,100 on commission, that there was no account of it on the books of the bank; his answer was that Woodson, president of the bank, had disposed of certain certificates, and that he (Chamberlain) had given Steiner Brothers, of Birmingham, the authority to sell said certificates, and agreed to pay them a commission; that when they (Steiner Brothers) notified him that they were ready to take or deliver the certifi-

cates, Woodson had disposed of them in New York; he was unable to forward the certificates to Steiner Brothers, and, as a consequence, they made a demand upon him for their commission, and he (Chamberlain) was compelled to pay it under the contract or agreement he had with them; that he thought the bank ought to pay this commission, and he had therefore included it in his account. Witness says, "My recollection is, he stated, that Woodson had paid a portion of the commission, and this was the balance due." Witness declined to approve that part of the claim, on the ground that, if he had any claim at all, it was against Woodson as an individual, and not against the trust; that the balance of the claim was correct, and he would issue certificate for the account upon the Tompkins-White note and the mortgage being surrendered; that later on, about May 2, Chamberlain appeared with claim number 3, which was a duplicate of claim number 2, except the commission of $1,100 was omitted. This claim for $7,305.29, claim number 3, corresponds with the books of the bank and with the pass-book, with the exception of the $23,500. Witness says he asked Chamberlain why he had altered his claim, and why he had failed to include in his last claim the $23,500, and his answer was that he had received instructions from the court not to recognize the receiver's certificates sold by Woodson, because the order of the court authorizing the issue had not been complied with; that in this conversation, or during the time Chamberlain and witness were discussing these matters, Chamberlain stated that Woodson had given him a mortgage upon valuable property in Birmingham in order to insure him against all loss growing out of the sale or disposition of these certificates, and that his attorney (Judge Tompkins) came with Woodson with the mortgage, and advised him to accept it, and Chamberlain stated this mortgage was drawn up by Judge Tompkins, and that Judge Tompkins told him the property was worth more than the amount that had been realized from the certificates, or that was due on them; that this property was purchased for about $30,000 by Woodson; that when the property of which Chamberlain was receiver was sold under the order of the federal court, it was purchased by a syndicate composed of Col. Cole, Napoleon Hill, Enoch Ensley, and others. This is all the testimony of this witness, ex-

cept some statements in the latter portion of it, which are mere hearsay, and for this reason not considered of any value, although not specially objected to.

This parol testimony of these witnesses establishes the fact that Woodson did deposit Oct. 22, 1889, to the credit of Chamberlain as receiver, that which was equivalent to $6500, according to commercial usage under ordinary circumstances. Now, it is shown that Woodson had to his credit in the bank at the time, $500.00, and considering his relations to the bank and to the transaction, in the opinion of the special master, it was incumbent upon the intervenor to show that, in order to be able to insist with any plausibility or show of right that this individual check of Woodson for $500 should be considered and treated as so much money placed by him in the bank to the credit of the receiver. So, in reference to the item of $6500, there is no proof that it represents anything else than an entry on the books of the bank, and for this reason it is discarded, as well as the item represented by the $500 check, from further consideration. But the $16,500 stands upon a different footing somewhat, and, it is claimed, should be considered just the same as if that amount of money had been deposited that day in the bank by Woodson to the credit of the receiver. The testimony of the witnesses for respondents does not conflict with the testimony of the witnesses for the intervenor as to these entries on the books of the bank, and the pass-book of these credits to the account of Chamberlain as receiver, and as to how and when the credits were entered and what they represent. The only difference between the witnesses on this point is, as to whether Chamberlain, the receiver, had knowledge of it and accepted it. The only witness for respondents is Chamberlain, the receiver. In his deposition, upon his examination-in-chief, are the following questions and answers thereto:

"Q. If these five certificates were ever sold, Mr. Chamberlaid, did you or not ever receive from any person, at any time, any money for these certificates so sold? A. I never received any money for them.

Q. Did or not the proceeds of these five certificates sued for by the Anniston Loan and Trust Company ever come into your hands at any time or in any way, while you were the re-

ceiver or since you have ceased to be receiver? A. Never did."

This witness is further examined in reference to this matter as follows:

"Q. It appears by exhibit to testimony delivered by Mr. Benham in this cause, that $17,000 was to your credit as of the 22nd of October; and $6500 on the 29th of November. Do you know whether or not any such amounts of actual money were put by the bank to your credit? A. I know that they said they had not money enough to pay—that they could not pay. That they would not allow me to check against them—that they could not make any payments on it.

Q. This check for one thousand dollars was the only check you drew on the money that was not paid, was it? A. Well, my best recollection is that it is; but I asked the cashier many times if he could pay checks if I drew them, and many times he said he could not; and I only drew checks when he said he could pay, except the one for $1000.

Q. You say that Mr. Woodson and Mr. Benham told you that this money has been placed to your credit in the bank? The seventeen thousand dollars? A. Yes, sir; I expect they did.

Q. Didn't he put the $17,000 to your credit? A. He might have done so. The amount he put on my pass-book amounted to some twenty odd thousand dollars, to twenty-three thousand and some odd dollars.

Q. Made up of two items, one of seventeen thousand dollars and one of six thousand five hundred dollars? A. Yes, and there was another, making the credit thirty-two thousand or thirty-three thousand dollars, I won't—I can't say how much.

A. I think I was (present) when the full credits were entered on pass-book . . Well, I will only swear that I was in the bank at the time the full credits were made.

A. I am satisfied that the credit of $17,000 and $6500 were given to my credit at different times. I know that that is true. . . .If it was put on our pass-book I objected to it and would not receive it.

Q. Will you undertake to swear that it was not placed on

the 22nd day of October, the $17,000? A. If it was true it was done without my knowledge at the time.

Q. When was it that you reported to the federal court that this money was on deposit to your credit in the bank? A. What I reported to the court was the correct day.

Q. Mr. Chamberlain, when you conversed with Mr. Woodson about his putting certain amounts of money to your credit in the bank that have been spoken of in the examination, did you understand that he was actually to put money in the bank to your credit? A. No, sir, he was not. He said he could not do it, that the money had been used to pay off debts he had in New York—merely put there to show.

Q. Then, in point of fact, there never was any actual money put in bank to your credit as receiver, on account of the sale of these five receiver's certificates for five thousand dollars each? A. There never was.

Q. For ought you know, Mr. Chamberlain, this money went to the credit of the First National Bank of Sheffield in New York, the proceeds of the sale of the certificates? A. I do not know anything about it."

It will be seen that this witness by his testimony does not contradict the testimony of Benham as to the credits, their entry on the books of the bank and the pass hook, and what they represent. Now, as to whether he was informed of the credits being made and his acceptance of them, this he does not deny. He might, if he had chosen to do so, have repudiated the whole thing, and if he had done so, then there would be no question but that the intervenor would have no claim or right to relief on account of these certificates. On the contrary, he recognized the entire transaction by his subsequent conduct in looking to and treating Woodson and the bank as liable to him for the proceeds of these certificates, he took their note for the amount, $23,500, and demanded and received from them an assignment of notes and mortgages on real estate to secure the payment of this liability. This is shown, first, by the paper, copy of which is made an exhibit to the deposition of the witness Carrington, which was dated "Sheffield, Ala., Oct. 24th, 1889," which was signed by C. D. Woodson individually and as president of the First National

Bank of Sheffield, acknowledging the receipt of $25,000 worth of receiver's certificates—being the five in controversy—and two acceptances aggregating $10,000, from J. G. Chamberlain; reciting that the proceeds of said acceptance and certificates were used by said Sheffield Bank without the consent of said Chamberlain, receiver, and agreeing, individually and for the bank, to secure said amounts by good security within ten days from date; second, by the mortgage of the Birmingham lots. In the mortgage it will be observed that it is given to secure the payment of two notes, one of which is for the aggregate amount of $23,500, being the $17,000 and the $6500 heretofore referred to as representing the proceeds of these certificates. This mortgage bears date October 28, 1889. The warranty clause of this mortgage is in the following language: "The above described land warranted free from all encumbrances and against any adverse claims." This mortgage, as appears from the evidence, was drawn and approved by Judge Tompkins, who was the attorney for Chamberlain as receiver, and there is no evidence in the case that Chamberlain, at the time he accepted this mortgage, was informed or had any knowledge of the vendor's lien upon the property mortgaged, which Tompkins afterwards asserted by bill in chancery filed, to set it up and enforce it. In this connection a copy of this mortgage is offered in evidence for respondents, which has appended to it and acknowledged by Woodson of this vendor's lien. It will be observed that this instrument, acknowledging the existence of this lien, bears date Nov. 27, 1889, and is acknowledged before L. W. Dimmick, notary public, Colbert county, Ala., Nov. 28, 1889; whereas the mortgage bears date of execution and acknowledgment Oct. 28, 1889, and was filed for record in the office of the court of probate at Birmingham the same date.

On the 7th of November, 1889, the mortgage on the lots in Sheffield and the lands in Colbert county is taken, duly acknowledged on the same day, and filed for record in Colbert county probate court November 12th, 1889. The evidence fails to show the date of the assignment and transfer of the Tompkins-White notes. It does not show that the consideration for the assignment of the notes was as security for the same indebtedness, for which the mortgages were executed as

security. In addition to the foregoing, the evidence shows that Chamberlain as receiver reported to the court the proceeds of these certificates as on deposit in the bank to his credit, and on Dec. 11th, 1889, the court rendered a decree of foreclosure and sale of the property for which the original bill was filed, and by that decree charged the property and its proceeds with the payment of these certificates. These are the acts and conduct of the receiver, which the intervenor claims are evidence of his acceptance of the deposits made to his credit in the bank as the proceeds of the certificates.

In the opinion of the special master, the receiver is by his conduct, so far as he is concerned, estopped from denying the validity of the disposition of these certificates by Woodson, but there is a question back of this, and that is: What effect, if any, has this estoppel upon the court whose representative Chamberlain was and upon the parties in interest and their property? It is certainly a very grave responsibility for a court to assume to take possession and control of property, and by its decree charge the property with the payment of debts of its creation, incurred in the process of its management and control of the property, making these obligations thus incurred and created a lien prior to all others upon the property. Because of the gravity of the responsibility thus assumed the courts have said, that third parties in dealing with its representative, the receiver in the cause, or with any one pretending to act for him and as his agent, do so at their peril and their own risk, if the transaction is unauthorized, or if, as in this case, the receiver fails to receive for the estate the benefit from the transaction contemplated and intended by the orders and decree of the court.

Now, apply these general principles to the facts of the case, so far as the court and the owners and purchasers of the property are concerned. In the first place, no sale of these certificates would be valid and binding upon them unless made by the receiver at a price and upon the terms prescribed by the order of the court, and he actually received the money. Now, it is conceded that, although the sale may be made by an unauthorized agent and at a price less than that authorized by the court, yet if the receiver gets the money which is the proceeds of the sale, or any part thereof, the trust estate is

charged with the payment of the amount so received by him. And although, under ordinary circumstances a credit entry of the amount in bank to the credit of the receiver, as is shown in this case, would, according to commercial usage and legal intendment, be equivalent to the actual receipt of the money by the receiver, yet under the peculiar circumstances of this case, and considering it in the light of the strict and rigid rule prescribed by the courts in regard to the sale of receiver's certificates, I cannot so consider it. Woodson is dead, and therefore we have not the benefit of his testimony in regard to these credits; but sufficient appears from the other testimony in the case to show that for all practical purposes contemplated by the decree of the court authorizing the sale of these certificates, in legal effect the receiver never did receive the proceeds of the sale of these certificates or any part of them. The burden of proof is upon the intervenors to establish this by satisfactory evidence. The intervenor, and the party from whom it purchased, chose to run the risk of purchasing these certificates without proper inquiry as to the authority and legality of the sale, and therefore the burden is upon it to show that the trust estate, notwithstanding the unauthorized sale, got the benefit of the proceeds and therefore ex æquo et bono should be held liable therefor. This is attempted to be done by showing these entries and deposits in the Sheffield Bank. The evidence does not satisfy me that these entries and deposits by Woodson were equivalent to a payment by him of the money to the receiver.

On the contrary, all the evidence goes to show that, although the entries were made crediting the receiver with the amount and that part of this credit was represented by amounts actually due from other banks to the Sheffield Bank, yet, at the same time, the proof shows that the latter bank was at the time insolvent; that Woodson was its president, and knew this fact better than anyone else, and therefore he must have known that by crediting the receiver with that amount on the books of his bank, the estate of which the receiver was the representative would not get the benefit of it; and that although the credit was given, part on October 22, ($17,000), and balance ($6500) November 9th, yet, at no time after the date of either credit was the bank in a condi-

EXCEPTIONS OF INTERVENOR TO REPORT OF SPECIAL MASTER.

In the United States Circuit Court for the Northern Division of the Northern District of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company.

In re. Intervention of the Anniston Loan and Trust Company:

And now comes the Anniston Loan and Trust Company and files the following exceptions to the report of Milton Humes, special master in the above intervention, in the above entitled cause.

1. The master ruled improperly in finding that the authority of Woodson to sell the five certificates numbered eight, nine, ten, eleven and twelve, respectively, was revoked on the 13th of October, 1889, there being, as the intervenor insists, no sufficient legal proof to sustain this finding.

2. That the master ruled improperly in overruling intervenor's objection to the paper offered in evidence purporting to be a copy of a telegram sent by Jacob G. Chamberlain, in Atlanta, Georgia, to C. D. Woodson, in New York, on the 13th of October, 1889, and also as to the paper purporting to be a copy of a telegram sent to Jacob G. Chamberlain in Atlanta by C. D. Woodson in New York on the 13th of October, 1889, because there was no sufficient proof of the authenticity of said telegrams, nor was the absence of the originals accounted for, nor was it sufficiently shown that the copies offered in evidence were correct copies of the originals.

3. That the master ruled improperly in overruling intervenor's objections as specially noted by the commissioner to the testimony of Jacob G. Chamberlain, receiver, and also as to H. B. Tompkins, agent and attorney of Jacob G. Chamberlain, receiver, with C. D. Woodson, who was dead at the time of the delivery of such testimony, and whose estate is interested in the result of this suit, as to the conversations with

said Woodson in reference to the sale of said receiver's certificates.

4. The master ruled improperly in holding that counsel for intervenor conceded that Woodson acted without authority in selling the certificates in New York to D. T. Parker, since counsel in fact insisted that there was no sufficient legal proof before the master of the revocation of Woodson's authority to sell the said certificates.

5. The master ruled improperly in not sustaining intervenor's objections as noted by the commissioner in the depositions of H. B. Tompkins and Jacob G. Chamberlain.

6. The master ruled improperly in holding that there is no proof that the item of sixty-five hundred dollars was properly placed to the credit of Jacob G. Chamberlain, receiver, as deposited in said First National Bank, since the placing of said amount to the credit of said receiver under the circumstances of this case was equivalent to a deposit to the credit of said receiver in said bank.

7. The master ruled improperly in holding that the item of five hundred dollars placed to the credit of Jacob G. Chamberlain, receiver, on individual check of Woodson for that amount, was not properly placed to his credit as a deposit in said bank, since placing the same to his credit on the books of said bank was equivalent to so much deposited to his credit.

8. The master ruled improperly in holding that it devolved on the intervenor in this case to show that Woodson had a sufficient amount on deposit in bank to authorize the bank to pay his individual check for five hundred dollars, by placing the same to the credit of Jacob G. Chamberlain, receiver.

9. The master ruled improperly in his finding that the intervenor is not entitled to recover at least as to the sixteen thousand, five hundred dollars which was actually deposited and placed to the credit of Jacob G. Chamberlain, receiver, in the First National Bank of Sheffield by C. D. Woodson, president of said bank.

10. The master ruled improperly in holding that the intervenor was not entitled to recover for the entire twenty-three thousand, five hundred dollars, placed to the credit of said

Jacob G. Chamberlain, receiver, in the First National Bank of Sheffield, and which the said Chamberlain reported to the court was on deposit to his credit in said bank as the proceeds of sale of said receiver's certificates numbered from eight to twelve inclusive.

11. The master ruled improperly in holding that the proceeds of the receiver's certificates sold by Woodson were not properly deposited to the credit of Jacob G. Chamberlain, receiver, in the First National Bank of Sheffield.

12. The master ruled improperly in holding that the proceeds of the receiver's certificates sold by Woodson did not come into the possession or control of Jacob G. Chamberlain, receiver, and through him, of the court.

13. The master ruled improperly in holding that the action of the court since the sale of said certificates was not such as to work the ratification of the sale and authorize the purchaser to ask that they be paid.

14. The master ruled improperly in holding that the conduct of the purchasers of said property was not such as to work the ratification of the sale and authorize the intervenor to be protected in his purchase.

15. The master ruled improperly in holding that intervenor is not entitled to recover for the receiver's certificates numbered from eight to twelve inclusive, as a valid claim against the property referred to in the certificates.

KNOX & BOWIE,
Sols. for Intervenor, the Anniston Loan and Trust Co.

The foregoing exceptions were duly presented to me and filed with the papers in the cause August 19th, 1892.

MILTON HUMES,
Special Master.

Endorsed: Filed in Clerk's Office Aug. 27th, 1892.
N. W. TRIMBLE, Clerk.

ORDER SETTING CAUSE FOR HEARING ON EXCEPTIONS TO MASTER'S REPORT.

Before Hon. A. P. McCormick in Vacation.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company. } No. 171.

In the matter of the intervention of the Anniston Loan and Trust Company in the above entitled cause, upon consent of parties in interest, it is ordered by the court that the exceptions to the master's report in this cause shall be heard in vacation, and said cause is now submitted upon the exceptions filed by the Anniston Loan and Trust Company to the master's report in this cause for decree in vacation as aforesaid, before Hon. A. P. McCormick, circuit judge, upon five days notice to respondents' solicitor, and that the judgment so rendered shall be made the decree of the court, or if rendered in term time, with leave of either party to appeal.

In open court Oct. 18, 1892.

JOHN BRUCE, Judge.

Filed in open court Oct. 18, 1892.

N. W. TRIMBLE, Clerk.

NOTE FROM MINUTES OF COURT.

I, N. W. Trimble, clerk of the circuit court of the United States for the northern division of the northern district of Alabama, hereby certify that the said circuit court was for the several terms herein specified, opened and adjourned on the dates herein given, as the same appears of record in the minute books of the said court.

Regular October Term, 1889.

Met on the second Monday, it being the 17th day of October, Hon. John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, presiding.

Adjourned October 31st, until Monday, December 2d, 1889.

Monday, December 2d, met pursuant to adjournment, Hon. Harry T. Toulmin, judge of the district courts of the

United States for the southern district of Alabama, presiding under order of assignment from Hon. Don A. Pardee, U. S. circuit judge, fifth judicial circuit.

Adjourned sine die, December 7th, 1889.

Regular April Term, 1890.

Met on the first Monday, it being the 7th day of April, Hon. John Bruce, judge, presiding. Adjourned April 29th, until Tuesday, May 20th, 1890. Adjourned May 20th, 1890, sine die.

A true copy from the records.

Witness my hand and the seal of the said circuit court, this 17th day of November, 1892.

[Seal.] N. W. TRIMBLE, Clerk.

OPINION OF THE COURT ON EXCEPTIONS TO MASTER'S REPORT.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company. } No. 150.

In this case the exceptions taken are fifteen in number, and are so taken that it is difficult to pass on them seriatim, and if this was done many of them could not be wholly sustained or wholly overruled. The special master has made a full, clear and able report of the facts established by the proof, and of the principles of law applicable to the facts as settled by recognized authorities; but, in my judgment the conclusion he reaches on the whole case, and to which the fifteenth exception is taken, a kind of general exception or demurrer, is not required by a sound application of those legal principles to the undisputed, or well established facts in this case, and is not equitable. The special master concedes that the receiver's action in the matter has been such as to estop him from contesting the sale of the certificates in question—he concedes also that the receiver acted in perfect good faith, both of which, in my judgment, are indisputable. The contestant

urges that the receiver is only the hand of the court—the court's bailiff—as counsel expressed it in his oral argument, and that the court could not be estopped; that the responsibility of the court in such cases was so great that the rules in good conscience imposed on other parties could not be drawn and enforced on, or applied to the court; that the certificates authorized to be issued, though payable to bearer, are not negotiable paper, and the purchaser investing in them even for full value, and in the utmost good faith, must lose his claim against the trust estate if, in fact, the proceeds do not reach the hands of the receiver. However improvidently courts may have sometimes authorized the putting out of this class of securities, it has become well settled that in the administration of active trusts it often become necessary to borrow money to effect the proper administration of such trusts, and this form of security has received the sanction of experience and it cannot be to the interest of such trust estates, or to the praise of equitable jurisprudence, that the court thus authorizing the issuance of such securities should be required to do in reference to their protection what it would not permit any other party to do. Grant that the receiver is only the hand of the court, the court's bailiff, or to use a term of more definite signification, the court's agent, can this agent so act that if a principal he would be estopped, and the court receive such information of his acts and take such action on his reports of his acts that any other principal similarly charged would be estopped from refusing to protect the party dealt with, and yet the court itself refuse or decline to afford and enforce such protection? It seem to me that to so hold would not only embarrass the course of such proceedings in equity, but bring discredit on the Temple. The courts will not consent to the ensnaring of purchasers who, in good faith, invest their means in this class of securities. In this case the issue and sale of the certificate were authorized by the proper decree of the court. The receiver acted in perfect good faith in accepting a credit on his deposit account with the Sheffield Bank, known by him at the time to be embarrassed but still doing business, and continuing in business with open doors for more than a month after the acceptance of said credit. On account of his knowledge of the strained condition of the bank,

he demanded and received from the president of the bank valuable securities to protect this deposit, he reported the sale of these certificates to the court with the statement that the proceeds were to his credit, as receiver, with the bank; the corpus of the property in the hands of the receiver was ordered sold to pay costs, the whole issue of receiver's certificates, including these and the mortgage debts; this decree was afterwards so modified as to permit the validity of these certificates to be further inquired into; the property was sold, subject to all valid charges, and was, with the securities, taken by the receiver from the president of the bank, transferred to the purchasers at this sale, and it is my judgment that both the receiver and the purchasers are estopped, and that a court of equity cannot put this loss—if there is to be a loss, which is by no means clear to my mind—on the bona fide purchaser and holder of said certificates; that the decision of the special master must be set aside, and the intervenor have judgment for the full amount of the principal of said certificates and of the interest thereon, according to their terms, to the 22d day of November, 1892, the day this hearing was had, with lawful interest thereon until paid.

And it is accordingly so ordered and decreed.

A. P. McCormick,
Cir. Judge 5th Circuit.

Endorsed: Filed Dec. 22, 1892.

N. W. Trimble, Clerk.

H. E. GARTH, INTERROGATORIES.

In the Circuit Court of the United States.

The Central Trust Company
vs.
The Sheffield and Birmingham Coal Iron and Railway Co. et al.

In re. Intervention of the Anniston Loan and Trust Co.

Interrogatories to be propounded to H. E. Garth, who resides in the city of New York and state of New York, a material witness for the Anniston Loan and Trust Company,

whose deposition when taken, in answer to the following interrogatories, will be read in evidence on the trial of said petition and intervention of said company.

First interrogatory:

In what business are you engaged and how long have you been engaged therein, and what office, if any, do you hold? Did you know C. D. Woodson? Did you know D. T. Parker? If at any time you purchased of C. D. Woodson receiver's certificates of the Sheffield and Birmingham Coal, Iron and Railway Company, please inform me how many and what certificates you purchased? Please state whether you purchased certificates numbers 8, 9, 10, 11 and 12, issued October 10th, 1889? Please state fully under what circumstances you purchased the same and at what price you purchased the same? State in what capacity was said Woodson acting at the time? State all he stated to you in reference to his authority for selling said certificates, did he tell you that he was authorized to sell the same? Did you buy any other certificates at the same time from C. D. Woodson, if so, state what you bought, how many of said certificates you bought and how much you paid for them? Did you or not buy from him certificates Nos. 1, 2 and 3, issued Sept. 19th, 1889? What did you do with said certificates? Has the legality of the purchase of said last named certificates ever been questioned by the Sheffield and Birmingham Coal, Iron and Railway Company or any representative of said company? State whether or not the certificates were purchased at the same price that the certificates which were purchased for D. T. Parker were purchased? Were they or not purchased at the same time and at the same price? Is it or not true that the interest on these last named certificates has been met regularly since the purchase thereof? Is it or not true that there has never been any question as to the legality of these certificates?

Second:

How long before the purchase of these certificates had you known C. D. Woodson? In what business was he engaged? How long had he been in said business? How long had you known him? State whether or not at the time you purchased

said certificates from him his standing was good in banking and financial circles in the city of New York? Was he or not considered by reliable and competent business men in the city of New York as a safe and successful banker or business man?

Third:

State anything else you know that may benefit the petitioner in this proceeding?

JNO. B. KNOX, sol. for
Anniston Loan and Trust Company.

To the Sheffield and Birmingham Coal, Iron and Railway Company et al., or Henry B. Tompkins, their attorney of record:

You will please take notice that the foregoing interrogatories are on file in the office of D. D. Shelby, special master, appointed in this case, and after the expiration of the time required by law, a commission will issue to take and certify the deposition of said witness as required by law.

The Anniston Loan and Trust Company suggests the name of Thomas H. Hubbard as a suitable commissioner to take the deposition of said witness, H. E. Garth; that said Thomas H. Hubbard resides in the city of New York and state of New York, and said witness, H. E. Garth, resides in the city of New York and state of New York.

JNO. B. KNOX, sol. for
Anniston and Trust Company.

Endorsed: Filed April 18th, 1891.

N. W. TRIMBLE, Clerk.

H. E. GARTH, CROSS-INTERROGATORIES.

In the Circuit Court of the United States for the Northern District of Alabama.

Central Trust Co. of New York
vs.
The Sheffield and Birmingham Coal, Iron and Railway Co. et al.

In re. Intervention of Anniston Loan and Trust Company.

Cross-interrogatories to be proprounded to H. E. Garth, of the city of New York, witness for intervenor.

Respondents object to each and every of the three direct

interrogatories upon the ground that they are illegal and irrelevant, and that the matters and things sought to be inquired about from the witness are not such that the witness can properly and legally testify concerning.

With these objections, respondents propound the following cross-interrogatories:

First. If you say that you purchased from C. D. Woodson receiver's certificates mentioned in the first direct interrogatory, state if you made the purchase as broker or agent for D. T. Parker, or any other person, and what commission or compensation you were paid for effecting such purchase?

If you state the capacity in which said Chas. D. Woodson was acting when he sold you these certificates, then state fully how you knew said Woodson was acting in such capacity? Did he exhibit to you letters or other evidence showing the capacity in which he was acting? And did he not exhibit to you copies of the order of court authorizing the issue of said receiver's certificates that you so purchased from said Chas. D. Woodson, or through said Chas. D. Woodson?

What was paid said Charles D. Woodson for certificates 8, 9, 10, 11 and 12, who paid him the money, and whose money was it that was paid? Were not certificates 1, 2 and 3 purchased from said Chas. D. Woodson some time before the sale of certificates Nos. 8, 9, 10, 11 and 12 was made by said Woodson, and if so, how long before, and what was the difference in price paid for these certificates?

Second. Cross-interrogatories to second direct interrogatory:

If you state you knew the business in which said Woodson was engaged, and his financial standing, then state if you did not know that in the fall of 1889 said Chas. D. Woodson was greatly embarrassed, and had made frequent visits to New York for the purpose of negotiating loans; and was it not well known by bankers, and in banking circles, in New York, that said Chas. D. Woodson was not flourishing condition, but that he, as well as the First National Bank of Sheffield, of which he was the president, were in financial straits? Did you not know that said First National Bank, of which said Woodson was president, failed and went into the hands of a receiver in the latter part of 1889?

State if you purchased these certificates spoken of from said Chas. D. Woodson because of the financial standing and character of said Chas. D. Woodson, or because you had inspected the certificates themselves and the order authorizing their issue and sale, and believed, from said certificates and such order of court, thaf the purchase of said certificates was a good investment?

HENRY B. TOMPKINS,
Sol. for Respondents.

Endorsed: Filed May 5, 1891.

N. W. TRIMBLE, Clerk.

COMMISSION TO TAKE TESTIMONY OF H. E. GARTH.

Circuit Court of the United States for the Northern District of Alabama, Northern Division.

The President of the United States to Thomas H. Hubbard—Greeting:

Know ye, That in confidence of your prudence, fidelity and competency, you have been appointed commissioner, and by these presents are invested with full power and authority to call before you and examine H. E. Garth, as witness in behalf of the intervenor, the Anniston Loan and Trust Company, in a cause pending in the circuit court of the United States for said division of said district, wherein the Central Trust Company of N. Y. is plaintiff, and the Sheffield & Birmingham Coal, Iron and Railway Company, defendant, on oath to be by your administered, upon interrogatories annexed to this commission, to take and certify the depositions of witnesses, and return the same to said court, to be holden in the city of Huntsville, in said division of said district, on the 2nd Monday of October next, under your hands and seal.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said court, at the city of Huntsville, in said division of said district, this 1st Monday in April, one thousand eight hundred and ninety one, and of the independence of the United States the hundred and fifteenth year.

Issued June 22, 1891.

N. W. TRIMBLE,
Clerk U. S. Circuit Court.

ANSWERS OF GARTH.

In the Circuit Court of the United States.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

In re. Intervention of the Anniston Loan and Trust Company:

Southern District of New York,
State, City and County of New York. } ss.

Deposition of H. E. Garth, a witness sworn on the 29th day of June, 1891, at 54 Wall street, in the city of New York, in said State and county, under and by virtue of a commission issued out of the circuit court of the United States in a certain case pending therein between the Central Trust Company of New York, complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and others, defendants. The said H. E. Garth being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first direct interrogatory he saith:

I have been engaged in the banking business for many years, and am now president of the Mechanics National Bank of this city. I knew Mr. C. D. Woodson and D. T. Parker.

I purchased of Mr. Woodson 3 certificates of the Sheffield and Birmingham Coal, Iron and Railway Company of $5,000 each, Nos. 1, 2 and 3, and shortly afterwards bought for Mr. D. T. Parker 5 certificates of $5,000 each from Mr. Woodson. As well as I can remember they were numbers 8, 9, 10, 11 and 12. Mr. Woodson called at my office with Nos. 1, 2 and 3, and I bought them, paying him 80 cents on the dollar for them; and in about two or three weeks afterwards he called to see me again, and I bought the five for Mr. D. T. Parker at his (Parker's) request. I believe their numbers were 8, 9, 10, 11 and 12. I paid Mr. Woodson either 70 cents on the dollar or $17,000 for the five certificates of $5,000 each.

Mr. Woodson told me that the receiver of the Sheffield and Birmingham Coal, Iron and Railway Company owed his bank, and gave the certificates to him to sell. I do not know what

capacity he was acting in further than that I knew he was president of the First National Bank of Sheffield, and that he had stated that the receiver was indebted to his bank.

I sold the certificates Nos. 1, 2 and 3 that I bought. Those bought for Mr. Parker were handed to him.

So far as I know, the legality of the purchase of certificates Nos. 1, 2 and 3 has never been doubted or questioned.

I have already stated the price and about the time when the certificates were purchased. As nearly as I can remember the first were bought the last of September and the others the middle of October, 1889.

So far as I know the interest of Nos. 1, 2 and 3 has been paid regularly; I never heard to the contrary.

To the second direct interrogatory he saith:

I cannot say how long I knew Mr. Woodson before the purchase of the certificates; probably a year. He was engaged in the banking business a number of years in Atlanta, Georgia, and Sheffield, Alabama.

I cannot say what his standing was in banking and financial circles in the city of New York. He informed me that his bank was hard up, but was perfectly good. So far as I know everybody regarded him as thoroughly honest and reliable.

To the third direct interrogatory he saith:

At the time that Mr. Parker purchased his certificates he was debating whether he would take some Ensley Land Company notes that he expected would pay him about the same rate of interest, but he decided to take these certificates because he liked the security better.

To the first cross-interrogatory he saith:

I bought Nos. 1, 2 and 3 for myself and some time afterward I bought five of $5,000 each for Mr. D. T. Parker. I was not paid any commission or compensation for making the purchase. I did not act as brokor or agent for Mr. Parker except in the sense that I was his friend and he asked me to purchase them for him.

Mr. Woodson did not exhibit to me any letters showing the capacity in which he was acting or any copies of order of the court authorizing the issue of the receiver's certificates. I

have already stated all that I know about the capacity in which he was acting.

I have already stated what was paid Mr. Woodson for certificates Nos. 8, 9, 10, 11 and 12. I paid him the money for Mr. Parker, and it was Mr. Parker's money.

I have already stated the time when the different certificates were purchased, and the price paid.

To the second cross-interrogatory he saith:

I have already stated all that I know about Mr. Woodson's financial condition in the fall of 1889. I do not know that he made frequent visits to New York for the purpose of negotiating loans, but I know that he called at my bank several times for the purpose of selling these certificates. I suppose what Mr. Woodson told me about his condition was known to other bankers in this city where he was known.

I know that the First National Bank, of which Mr. Woodson was president, failed and went into the hands of a receiver, I think in the latter part of 1889.

I purchased the certificates that I bought for myself, because I thought they were good, and I am satisfied that Mr. Parker bought his because he thought they were a good investment.

H. E. GARTH.

I, the undersigned commissioner in said commission named, hereby certify that I am personally acquainted with the said witness, H. E. Garth, and know him to be the identical person named in said commission; that he was sworn and examined as above stated, and that his evidence was taken down as near as might be in his own language, and was subscribed by him in my presence on this the 30th day of June, 1891 at the place above stated, and that I am not of counsel or of kin to any of the parties to the cause or in any manner interested in the result thereof.

THOMAS H. HUBBARD,
Commissioner.

(Seal)

Sealed in envelope and endorsed:

Central Trust Company of New York,
vs.
The Sheffield & Birmingham C., I. and
Railway Company et. al.

Intervention of Anniston Loan and Trust Company.
Deposition of H. E. Garth.
Mailed the 30th day of June, 1891.

THOMAS H. HUBBARD.

Recd. in Clerk's office July 2nd, 1891,

N. W. TRIMBLE, Clerk.

Opened by consent of cousel representing the petitioner and all the respondents. This July 7, 1891.

JNO. B. KNOX, for Petitioner.
HENRY B. TOMPKINS, Sol. for Defts.

EVIDENCE BY T. L. BENHAM.

In the Circuit Court of the United States for the Northern District and Division of Alabama.
In Equity. At Huntsville.

The Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company.

In re. The Petition and Intervention of the Anniston Loan and Trust Company:

This cause came on to be heard on reference before Hon. D D. Shelby, special master, appointed in this case, on the 15th day of May, 1891; and John B. Knox, Esq., was present representing the petitioner, the Anniston Loan and Trust Company, and Lawrence Cooper, Esq., was present representing all the respondents.

Thereupon the petitioner called as a witness T. L. Benham, who, being first duly sworn, testified as follows:

Direct-examination by Mr. Knox:

Q. Where do you reside? A. Sheffield, Alabama.

Q. Where did you reside in October, November and December, 1889? A. At Sheffield, Alabama, and have resided there ever since; have been about four years.

Q. Were you connected with the First National Bank of Sheffield, and if so, in what relation? A. Yes, sir; as cashier.

Q. How long were you cashier of that bank? A. About

3 years, from the organization of the bank until it was suspended.

Q. When did you commence? A. About the 1st of January, 1887, and continued until the 29th of November, 1889.

Q. Have you a bank book with you? A. I have the individual bank books with me.

Q. Did you know C. D. Woodson? A. Yes, sir.

Q. What connection did he have with that bank? A. He was president of the bank from its beginning to its suspension.

Q. Did you know Jacob G. Chamberlain? A. Yes, sir.

Q. What office did he hold in October and November, 1889? A. He was receiver of the Sheffield and Birmingham Coal, Iron and Railway Company.

Q. During October, 1889, did Mr. Woodson deposit any money in that bank to the credit of Mr. Chamberlain as receiver? A. Yes, sir.

Q. How much and when did he deposit it? A. He made one deposit of $17,000 on the 22d day of October, 1889, and another of $6,500 on the 5th day of November, 1889.

Q. Was that deposit to the credit of Chamberlain as receiver? A. Yes, sir.

Q. Who wrote the deposit slip for that? A. I wrote the deposit slip of the $17,000, and, I think, for the $6,500 also.

Q. Have you got the deposit slip for the $17,000? A. Yes, sir (identifies it).

Q. Did Mr. Woodson state to you at the time those entries were made what that money was and where it came from? A. My recollection is I asked him if that was what he sold the certificates for; I don't remember exactly the conversation; he told me it was the proceeds of those certificates or some he had sold. I was informed he had sold some; he told me so himself. (Mr. Cooper objects to this answer).

Q. Did you know from Mr. Woodson that he had some receiver's certificates to be sold for Mr. Chamberlain? A. To the best of my recollection he told me he was going to sell some receiver's certificates for Mr. Chamberlain.

Q. I will ask you if he stated that the amount deposited there was the proceeds of those certificates? A. Yes, sir.

(Mr. Cooper objected to the foregoing question, because it calls for heresay evidence, and is illegal and incompetent).

Q. You were cashier of the bank and had charge of the books then? A. Yes, sir.

Q. Does your bank book show these entries to the credit of J. G. Chamberlain, receiver? A. Yes, sir.

Q. What is the custom in banking: does the depositor have what is called a pass-book? A. Yes, sir.

Q. Did J. G. Chamberlain have an account on your books as receiver? A. Yes, sir.

Q. Did he have one of these pass-books? A. Yes, sir.

Q. Were those two items (one for $17,000 and the other for $6,500) credited on his pass-book? A. Yes, sir.

Q. How much did J. G. Chamberlain have to his credit in your bank on the books on the 5th November, 1889? A. (Refers to ledger) $25,278.83.

Q. Does that include the $17,000 and the $6,500? A. The $6,500 was placed on his pass-book by the instance of Mr. Woodson, and he didn't exactly explain the debit entry to it. That would make $31,778.83.

Q. There were some other deposits he made in addiiion to these? A. Yes, sir.

Q. He was keeping a running account with your bank? A. Yes.

Q. How much did he have to his credit on the 10th of October, 1889? A. $1,607.78.

Q. Did he make any deposi' between the 10th of October and the 5th of November, except the two deposits that he said were the proceeds of these certificates—the $6,500 and the $17,000? A. He had a deposit of $4,060.28 on the 28th of October, and on the same day $844.45; that is all between those dates.

Q. Did he make any deposits after the 5th of November? A. No, sir.

Q. After the 9th? A. No, sir.

Q. Did he do any business with the bank after that day? Were there any checks paid? A. Yes, sir; there were debits, but no credits; he continued to draw checks on our bank down to the 27th of November.

Q. What was due on your books at the time of the suspen, sion, November 29th? A. $30,805.29.

Q. How many checks did he draw on your bank that were

honored after the 9th of November? A. I would have to refer to my journal to show that; my ledger only shows total checks paid each day.

Q. What is the total amount paid between those two dates? A. On November 13th, $150.08; on the 14th, $235.26; on the 15th, $38.43; on the 22nd, $123.37; on the 25th, $ 0.40; and on the 26th, $31.00.

Q. Those checks were paid in the usual course of business? A. I don't know the date of the checks, but all that came in there were paid; I don't remember what day they were drawn.

Q. I will ask if you heard C. D. Woodson say at any time that he had secured Chamberlain, the receiver, for his deposit in your bank? A. Yes, sir. (Mr. Cooper objects to this question and answer.)

Q. What did he say? A. He told me he had secured Mr. Chamberlain, receiver, for his deposit.

Q. Do you remember whether that statement was made before or after the suspension of your bank? A. About the time; I don't know whether it was just before or just after.

Q. State what was due Mr. Chamberlain, receiver, on the 19th of September, 1889. A. He was overdrawn then $7972.50.

Q. How much did he check out between the time of the first deposit on October 22nd and the time of the suspension of the bank? A $2859.18 from the close of the 22nd of October.

Q. Were any of his checks paid on the 22nd of October? A. Yes, sir; $576.46.

Cross-examination by Mr. L. Cooper:

Q. The statement of the account of J. G. Chamberlain, as receiver with the First National Bank of Sheffield, is on the books of that bank? A. Yes. sir.

Q. The statements you make relative to that account are taken from the ledger? A. Yes, sir.

Mr. Cooper: "Please make a copy of that account from the close of business on the 30th of September, 1889, till the suspension of the bank on the 29th day of November."

(Said account is herewith filed, marked "Exhibit A".)

Q. You have stated, if I understand you correctly, that you made out the deposit-slip of these two deposits? A. Yes, sir; I stated that the bank slips were made out by me for the two deposits, one of $17,000 on the 22nd of October, and the other of $6500 on November 5th, when Mr. Woodson told me to credit Mr. Chamberlain's account.

Q. Was Chamberlain present when you made out this bank-slip? A. I do not remember.

Q. Was it usual for you to make out the slips in the absence of the depositor? A. Yes, sir; that is done.

Q. Did you make out the pass book for Mr. Chamberlain? A. No, sir, I think that was the business of the individual book-keeper, J. R. Jones, of Florence.

Q. How do you know that these two deposits were on his pass-book? A. I made out the deposit-ticket for the $17,000 and placed the $6500 on his pass-book.

Q. Can you state of your own knowledge that the deposit of $17,000 was on his pass-book? A. No, sir; not definitely. I don't remember of my own knowledge that it was on there.

Q. When you entered the credit of $6500 where did you get the pass-book? A. Mr. Chamberlain's book-keeper, Mr. McTyre, brought it in, I think.

Q. Do you know from what source Mr. Woodson got this $17,000? A. No, sir.

Q. Was it a deposit of $17,000 in cash? A. It was money, Mr. Woodson told me, that he had deposited to our bank's credit with other banks in New York, stating that it was the proceeds of sale of certificates.

Q. It is true, then, that in the First National Bank of Sheffield that $17,000 was not deposited in money to the credit of Mr. Chamberlain? A. No, sir; it was deposited to his credit by the advice of Mr. Woodson, and debited to our correspondents and $500 to himself, according to his instructions.

Q. Please state how it was that Mr. Chamberlain obtained credit by which a deposit of $17,000 was made? A. That was by the advice of Mr. Woodson. Of that amount $3500 debited to the Central National Bank of New York, he had $10,000 debited to W. L. Moody & Company, and $3,000

debited to the Berney National Bank of Birmingham, and his own account debited with $500.

Q. How did Mr. Woodson debit his account with $500, so that Mr. Chamberlain would get credit for it? A. He said he would furnish $500 of the money.

Q. From what source was the deposit of $6500 obtained? A. It was just an entry credited to Mr. Chamberlain by the advice of Mr. Woodson in the same way the other was credited to him.

Q. You can't state that the $6500 was a deposit in money to the credit of Mr. Chamberlain? A. All the deposits I refer to were credited just the same as any others.

Q. You don't know, further than you have stated, how Mr Woodson acquired this $17,000 deposited on the 22nd of October? A. I don't know that I do.

Re-examination by Mr. Knox:

Q. Mr. Cooper asked you whether this money was on Mr. Chamberlain's pass-book; after the deposit of the $17,000 his pass-book was balanced, was it not? A. Yes, sir, on the 29th of October.

Q. Could that pass-book be balanced with your bank-book without that $17,000 being in it? A. No, sir; the two books are bound to balance; they would not balance correctly unless they were reconciled and compared. They are reconciled before a balance is brought down on either.

Q. After that on November 5th you placed the $65000 on the pass-book? A. Yes, sir.

Q. State whether or not this money (the $17,000) was placed to the credit of the bank in New York? A. Yes, sir; they handed me a statement according to what Mr. Woodson stated to me.

Q. It was, then, deposited to the credit of the First National Bank of Sheffield in New York banks, with the exception of $500? A. The banks' account reconciles with mine exactly.

Q. Their reports showed it had been credited with that amount? A. Yes, sir:

Petitioner then offered in evidence 5 receiver's certificates, numbered 8, 9, 10, 11 and 12, bearing date 10 October, 1889,

for $5000 each, due thirty-six months after date, signed by J G. Chamberlain, receiver. Petitioner also offered in connection with the testimony of the foregoing witness a mortgage from C. D. Woodson to J. G. Chamberlain, receiver, to secure this deposit; made November 9th, 1889; executed with Henry B. Tompkins as a witness, and acknowledged before a notary public in New York, Henry R. Gibbens; endorsed: "Satisfied by sale of property 30th day of October, 1890". Recorded—"Filed for record on 12th November, 1889." Recorded in Mortgage Record number 3, pages 262, 3 and 4 of Colbert County, Alabama.

(Signed) T. L. BENHAM.

EXHIBIT A TO BENHAM'S EVIDENCE.

J. G. Chamberlain, receiver, in account with First National Bank of Sheffield, Ala.

1889.		Dr.	Cr.
Oct. 1.	Balance down,		$5829 03
1.	To check,	$2471 98	
2.	"	9 50	
2.	By deposit,		3000 00
3.	To check,	2096 92	
4.	"	1629 31	
5.	"	216 72	
7.	"	613 80	
8.	"	117 00	
9.	"	66 02	
12.	"	1339 00	
15.	"	272 42	
16.	"	150 00	
18.	"	678 00	
19.	"	2331 16	
22.	By deposit,		4060 28
			17000 00
			9344 45
22.	To check,	577 46	
24.	"	891 00	
25.	"	84 34	
	Balance,	26189 13	
		$39733 76	$39733 76

Oct. 29.	By balance down, - -		$26189 13
30.	To check, - -	$619 44	
Nov. 1.	" - -	46 70	
5.	" - -	244 16	
6.	" - -	100 00	
9.	" - -	275 00	
13.	" - -	150 08	
14.	" - -	235 26	
18.	" - -	38 43	
22.	" - -	123 37	
25.	" - -	20 40	
26.	" - -	31 00	
29.	By deposit of 5th, -		6500 00
	Balance, - -	30805 29	
		$32689 13	$32689 13
Nov. 29.	By balance down, - -		$30805 29

TESTIMONY OF O. H. PARKER.

Petitioner then called O. H. Parker as a witness, who, being first duly sworn, testified as follows:

Direct-examination by Mr. Knox:

Q. You are the president of the Anniston Loan and Trust Company? A. Yes, sir.

Q. Who owns these receiver's certificates, numbered 8, 9, 10, 11 and 12, issued October 10th, 1889, and signed by J. G. Chamberlain, receiver? A. The Anniston Loan and Trust Company.

Q. From whom did you purchase them? A. From D. T. Parker.

Q. What price did you pay for them? A. 90 cents.

Q. How much in money? A. $22,500.

Cross-examination by Mr. L. Cooper:

Q. Do you know what D. T. Parker gave Mr. Woodson for these certificates? A. No, sir.

Q. Do you know whether he gave him anything for them?

A. I don't really know anything about them. My connection with it was with Duncan T. Parker only.

Q. Did you ever hear Duncan T. Parker state what he gave Mr. Woodson for them? A. No, sir; he was at New York at the time.

Q. Did you ever have any correspondence on the subject? A. None; except he wrote us we could have them at the price if we liked, and said they were a first lien against this property, and would no doubt be due in a year, and it would pay the company to take them

Q. What office did he hold then? A. He was a stockholder and director of the Anniston Loan and Trust Company I was then president.

Q. In that correspondence did he ever mention the amount which he gave Woodson for the certificates? A. He never mentioned that, nor Woodson's name either. It was afterwards I first knew he had anything to do with it.

Q. When did the Anniston Loan and Trust Company become connected with these certificates? A. I think we paid the draft about the 21st or 22d of October, 1889, and received the certificates at that time.

Re-examination by Mr. Knox:

Q. D. T. Parker informed you that he had bought those certificates? A. Yes, sir.

Q. You don't remember what he said he paid for them? A. No, sir.

Q. Did he state from whom he bought them? A. I don't know from whom he bought them.

Q. Did he inform you that he had bought them and would let your bank take them if you wanted to? A. Yes, sir.

Q. What was his position then? A. He was president of the First National Bank of Anniston.

Q. Did he inform you, or do you remember whether he said he had bought them for the First National Bank? A. Yes, sir, he first bought them with that intention.

Q. He afterwards informed you he would let your bank have them, and did so? A. Yes, sir.

(Signed.) O. H. PARKER.

TESTIMONY OF J. R. JONES.

The petitioner then introduced as a witness, J. R. Jones, who, being duly sworn, testified as follows:

Direct-examination by J. B. Knox for petitioner:

Q. In October and November, 1889, where did you reside?

A. Sheffield, Alabama.

Q. In what employment were you? A. I was individual bookkeeper for the First National Bank of Sheffield.

Q. In the course of dealing between the bank and its customers, I will ask you if the custom was to have a pass-book?

A. Yes, sir.

Q. What did it contain? A. It contained the entries on this ledger—corresponding with it.

Q Examine the item on that ledger of October 22d, 1889, deposit to the credit of J. G. Chamberlain, receiver, what is that item? A. There are three credits on that date, the largest is $17,000.

Q. Will you please state whether or not that item was entered to Mr. Chamberlain's credit, as receiver, on his pass-book? A. It was.

Q. Have you seen his pass-book? A. I have balanced it.

Q. When? A. October 29th, 1889.

Q. At that time did the pass-book balance with your ledger account there? A. Yes, sir; always had to do that; we never let the book leave the bank unless it did balance; it had to reconcile with the ledger.

Q. What was the balance to his credit in bank on the 29th of October? A. $26,189.13.

Q. Did you notice an entry of $6,500 deposited to his credit? A. Yes, sir.

Q Do you remember if that was entered on his pass-book?

A. No, sir, I did not balance it on November 29th; it was balanced, but not by me at that time,

Q. That account you have been speaking of is the account of Jacob G. Chamberlain, receiver, with the First National Bank of Sheffield? A. Yes, sir.

Q. He was receiver of the Sheffield and Birmingham Coal, Iron and Railway Company? A. Yes, sir.

(Signed) J. R. JONES.

Lawrence Cooper, Esq., representing the respondents, was present at the examination of said witness and declined to cross-examine him.

By agreement of the parties the examination of witnesses in this case is adjourned to the ——— day of ———, 1891.

Copy of deposit ticket attached to this testimony:

Deposited by J. G. Chamberlain, receiver, in First National Bank, Sheffield, Ala., Oct. 22, 1889:

Checks deposited by C. D. Woodson, $17,000.

Note: The above amount was placed to credit of J. G. Chamberlain, receiver. T. L. BENHAM.

ADDITIONAL DEPOSITION OF T. L. BENHAM.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

The Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Co.

In re. Intervention of Anniston Loan and Trust Company.

Hearing before master resumed on Tuesday, the 15th day of September, 1891. Intervenor introduced as witness, T. L. Benham, who testified as follows:

Q. Mr. Benham, on a former examination you were asked in reference to the deposit of $17,000, the proceeds of the sale of certain receiver's certificates by Mr. Woodson for J. G. Chamberlain, receiver, in New York, made on October 22d, 1889; I will ask you if you have since seen the pass-book of Chamberlain, the receiver? A. Yes, sir; this is it, in account with the First National Bank of Sheffield (identifies pass-book).

Q. What do you call that book? A. This is a pass-book between the bank and its customers.

Q. That is the book the depositor keeps himself? A. Yes, sir.

Q. When a deposit is made is it or not entered on that book? A. There are cases when a deposit is made with the pass-book, and there are cases when a deposit is made without the pass-book; and when it is not presented the deposit is entered on the ledger and whenever the book is balanced to correspond with the ledger, the deposit is entered on the pass-book.

Q. Is it or not the usual course of business to enter the deposit on the pass-book of the depositor? A. Yes, sir.

Q. What items made up this deposit of $17,000 placed to the credit of Chamberlain, the receiver, on October 22d, 1889? A. The deposit was made up of several items that Mr. Woodson gave me to charge to our New York correspondents, that is, the correspondents of the First National Bank of Sheffield, and a $500.00 check which he gave me against his own account. The items, as I remember them, were $6,000 and $4,000 charged to W. L. Moody & Company of New York; $3,000 reported to me by Woodson in the National Bank of the Republic, transferred by wire to the Berney National Bank, and the Berney National Bank handed our Mr. L. W. Dimmick, who was then in Birmingham, $3,000 in gold, which he brought to the First National Bank of Sheffield; and then there was $1,500 and $2,000 also charged to the Central National Bank of New York. The total of these several amounts given by Mr. Woodson to debit these several parties aggregates $16,500; and he gave me a check on his own account for $500, saying he had used $5,000 himself. He stated, as I stated on my former examination, that this money was for some certificates he had sold.

Q. Were these several amounts you speak of recognized by those banks, correspondents of yours, in their reports? A. In checking their accounts rendered I checked these amounts off, as Mr. Woodson advised me to charge to them, against corresponding amounts credited by them.

Q. When you notified them of it it was recognized? A. I didn't notify them of it; we just had monthly statements rendered.

Q. Well, did those monthly accounts show that those amounts had been deposited? A. Yes, sir.

Q. When you speak of charging certain amounts of money to banks in New York, do you mean that those amounts had

been placed to the credit of the First Netional Bank of Sheffield in New York? A. Yes, sir.

Q. Amounts, then, that you had on deposit with your New York correspondents are charged to your correspondents on your books at Sheffield? A. Yes, sir. Their credits are debits.

Q. Is it or not a fact that the $17,000 deposited to the credit of Chamberlain, receiver, on October 22d, 1889, as directed by Mr. Woodson, went into the bank or for the benefit of the bank, in the gold received from Birmingham and the several amounts placed to the credit of your bank in New York with your correspondents there? A. Yes, sir; with the exception of the $500, for which I got Mr. Woodson's individual check.

Q. Did you ever have a conversation in Sheffield with Judge H. B. Tompkins, in which you informed him that this deposit had never been made in your bank—that the bank had received nothing on account of this deposit? A. No, sir.

Q. Did you state to Judge Tompkins, or did anyone else in your presence, that this amount had never been actually deposited to the bank's credit? A. No, sir.

Q. I will ask you if Judge Tompkins in that or any other conversation asked you why you would, as cashier, consent that the books of the bank should be so falsified as to make it appear that the money was deposited, when in fact nothing had been deposited? A. No, sir.

Q. Did you or not in that conversation state that the reason that you allowed the books to be falsified, that you were in great pressure? A. In the first place, I do not remember having any conversation with Judge Tompkins at all about the matter.

Q. Did or did not that conversation occur, or that in substance? A. No, sir.

Q. Did you at that time or at any time make such a statement to Judge Tompkins, or any like that? A. No, sir; I don't remember having a conversation with Judge Tompkins about that at all. If I did, I did not state it in any such language as that.

Q. As a matter of fact, were the proceeds of the sale of those certificates deposited in your bank in the manner you

have stated? A. The amounts Mr. Woodson gave me to charge, which he told me were the proceeds of the certificates, were deposited in New York banks, and their statements made at the end of the month showed corresponding amounts credited.

Q. You know, as cashier of the bank, that the bank received the benefit of those items as the proceeds of the sale of the certificates? A. Yes, sir, as stated by Mr. Woodson, as the proceeds of the sale of the certificates. If his account was overdrawn at the time he made the $500 check, I don't know that the bank would receive any benefit; I mean it was included in the amounts he gave me, making $17,000.

Q. The bank paid his check to the extent of placing it to the credit of Chamberlain as receiver? A. Yes, sir.

The receiver objected to any and all statements by the witness as to what was told or said to him by C. D. Woodson, the same being heresay evidence.

ON CROSS EXAMINATION.

Q. Do you know anything of your own knowledge as to this $17,000 being the proceeds of the sale of these receiver's certificates? A. Only what I was told.

Q. Can you furnish the original statement signed by the Central National Bank of New York and W. L. Moody & Company to the First National Bank of Sheffield, showing the status of the account between the banks at the time referred to? A. I can show you the statements of W. L. Moody & Company and the Central National Bank of New York, showing the corresponding credits, against which I checked the debits that Woodson gave me to charge. Certified copies and the original can be produced at any time.

[Signed] T. L. BENHAM.

TESTIMONY OF J. R. JONES.

The intervenor then introduced as a witness J. R. Jones.

Q. You were the book-keeper of the bank when this transaction occurred with Chamberlain, receiver? A. I was the individual book-keeper, I kept the individual accounts.

Q. Do you know anything about the matters mentioned by Mr. Benham? Did you see the reports of the banks of New York? A. It was not my business to see them, but I have seen them. I kept the individual accounts and made the credits and debits of the depositors of the bank.

Q. Do you know of this $3000 in gold being received from Berney National Bank, from the books? A. Yes, sir.

Q. And these deposits that were made in New York, from the reports received from the banks in New York, were placed to the credit of the Sheffield Bank. A. If you want to know whether I have seen those entries on the books—yes.

Q. The bank books show that that much money was deposited to the credit of the First National Bank of Sheffield in New York? A. Yes, sir.

Q. And the reportt from those banks show that their books reconcile with yours as to those items? A. Yes, sir, though I was not the book-keeper for that department, I know that those statements showed those facts. I frequently went over and helped Mr. Benham check up his accounts. He kept the general books.

Q. What book is that (handing witness book)? A. This is the pass-book between J. G. Chamberlain, receiver, and the First National Bank of Sheffield, which I made out myself; it is in my handwriting.

Q. Does that pass-book balance with your bank books? A. It does to a cent.

Q. Were or not those items credited at the time they purport to be entered? A. Yes, sir.

[Signed] J. R. JONES.

(The original pass-book is offered and identified by witness.)

TESTIMONY OF R. W. AUSTIN.

The intervenor then introduced as a witness R. W. Austin.

Q. Mr. Austin, are you the receiver of the First National Bank of Sheffield? Yes, sir.

Q. After you took possession of the assets of the bank and qualified as receiver, did Mr. Chamberlain, receiver, present any claim against the bank to you as receiver? Yes, sir, he

presented a claim for $30,805.29, balance due on his deposit account, on the day the bank suspended, November 29th, 1889.

Q. The balance to his credit on his pass-book? A. Yes, sir. His claim was submitted on a blank form, which was prepared by the comptroller of the currency. This form is in the nature of an affidavit, stating that the man who presents it or signs it is a creditor of the bank. It was qualified to before R. H. Wilhoyte, a notary public, that there was a balance due him as a creditor of the bank of $30,805.29. I took charge of the bank January 2nd, 1890. Mr. Chamberlain presented his claim among the first of the creditors; I don't remember the exact date. He presented three accounts.

Q. Was that early or late in January, or in the middle? A. My recollection is, it was sometime during the month of January, from the middle to the last. Shortly after presenting his first account, Mr. Chamberlain came to my office and stated that he wished to withdraw it, and substitute another proof of claims, and accordingly on the 22nd day of February, he filed another claim number 2, for $8405.29. When Mr. Chamberlain first presented his first claim, I had his pass-book examined, balanced and compared with the individual ledger, and found it correct, as far as the face of the book was concerned. But I declined to give him a receiver's certificate of indebtedness until he surrendered to me certain notes of H. B. Tompkins and Walter S. White, and a mortgage that he held upon Woodson's property in Sheffield and Birmingham; taking the position that he had no right to the notes, because he had virtually taken them without authority from the officers of the bank, and that these mortgages were given him as security on his deposit account, and that I had instructions from the department not to issue certificates of indebtedness in cases of this kind until all collaterals and securities were surrendered to me. Mr. Chamberlain declined to surrender his notes and mortgage, and I refused to issue him a certificate. I here attach copies of the notes that Mr. Chamberlain held. After my refusal to issue Mr. Chamberlain a certificate upon his claim No. 1, he presented on or about February 22nd, 1890, claim No. 2 for $8405.29, claiming that it was the balance due on deposit account, and also $1100, amount agreed to be

paid by the First National Bank on commissions. I asked Mr. Chamberlain why he had included this item of $1100 on commission; that there was no account of it on the books of the bank. His answer was that Mr. Woodson, president of the bank, had disposed of certain certificates, and that he (Chamberlain) had given Steiner Brothers, of Birmingham, the authority to sell said certificates, and had agreed to pay them a commission. That when they (Steiner Brothers) notified him that they were ready to take or deliver the certificates, Woodson had disposed of them in New York, and he was unable to forward the certificates to Steiner Brothers, and as a result they made a demand upon him for their commission, and he (Chamberlain) was compelled to pay it under the contract or agreement that he had with them. He thought that the bank ought to pay this commission, and he had therefore included it in his account. My present recollection is that he stated that Mr. Woodson had paid a portion of the commission and this was the balance due. I declined to approve that part of the claim, on the ground that if he had any claim at all it was against Woodson as an individual, and not against the bank; that the balance of his claim was correct and I would issue him a certificate for the amount upon the Tompkins-White notes and mortgage being surrendered, taking precisely the same position as when claim No. 1 was presented.

Later on, on or about the 2nd day of May, Mr. Chamberlain appeared with claim No. 3, which was a duplicate of claim No. 2, except that the commission of $1,100 was omitted. This claim for $7,305.29, claim number 3, corresponds with the books of the bank and with his pass-book, with the exception of the $23,500. I asked why he had altered his claim, and why he had failed to include in his last claims the $23,500; and his answer was, that he had received instructions from the court (Judge Pardee, as I understood) not to recognize the receiver's certificates sold by Woodson, for the reason that the order of the court, authorizing the issuance of these certificates, had not been complied with. In this conversation, or during the time Mr. Chamberlain and myself were discussing these matters, he stated that Mr. Woodson had given him a mortgage upon valuable property in Birmingham in order to insure him against all loss growing out of the sale or disposi-

tions of these certificates, and that his attorney (Judge Tompkins) came with Woodson with this mortgage and advised him to accept it. And my present recollection is that Chamberlain stated that this mortgage was drawn by Judge Tompkins. He said that Judge Tompkins told him that the property was worth more than the amount that had been realized from these certificates or that was due on them. This property was purchased for about thirty thousand dollars by Woodson. When the property of which Mr. Chamberlain was receiver was sold under the order of the federal court, it was purchased by a syndicate, composed of Colonel Cole, Napoleon Hill, Enoch Ensley and others. This mortgage (as I was informed by Col. Roulhac, an attorney at Sheffield), had passed into the possession of the new owners of this property, and that they had employed him to investigate the mortgage, the title to the property, etc; and that he had visited Birmingham, examined the records, visited the property, and advised his clients to foreclose the mortgage. The new company also obtained possession of these notes of Tompkins and White, amounting in round numbers to $8,500, with some interest.

Q. What do you mean by the new company? A. The Alabama Iron and Railway Company came into possession of these notes on the purchase of the property, and I was informed that they bid them in for less than $200.

Q. Did this company also at that sale purchase the mortgage on the Sheffiield property? A. They sold two of Woodson's lots on the east side of Montgomery avenue, at the head of it, at the same sale. My recollection is that the officers of that company in Sheffield stated that they had purchased the property themselves for about $2,500.

Q. State what, in your judgment, is the value of the property in Birmingham? A. I have no personal knowledge as to the value of the property which was mortgaged to Chamberlain, receiver. But I have in my possession (which I herewith file, marked Exhibit —) letters from Judge Tompkins as to the value of this property, he being the owner of the same at one time. Iwas informed by Mr. Roulhac, who made an examination, as I have stated, for the Alabama Iron and Railway Company, that this was a very valuable piece of property

and worth in the neighborhood of the amount Woodson purchased it for—about $30,000—either $31,000 or $33,000.

Q. Do you know what the property in Sheffield is worth? A. The two lots sold by the Alabama Iron and Railway Company of Woodson's are two of the most desirable residence lots in that town. They are up facing the bluff, at the head of Montgomery avenue, in the midst of the best residence portion of Sheffield.

(Signed) R. W. AUSTIN.

ADDITIONAL TESTIMONY OF T. L. BENHAM.

The intervenor then recalled as a witness T. L. Benham, who testified as follows:

Q. About what would you consider the acreage property near Sheffield worth? A. If it is the same property I am thinking about I would consider it very cheap at $200 an acre. The property on Montgomery avenue I think would be cheap at $2,500 a lot.

(Signed) T. L. BENHAM.

The intervenor then introduced as a witness O. H. Parker, who testified as follows:

Q. When you purchased these certificates as president of the Anniston Loan and Trust Company, did the company have any notice of any defense against them or any irregularity in the sale? A. None whatever. We got notice when the coupons were demanded in the following April, on the 10th I think. Our New York correspondent presented them at the bank at which interest was payable; that was the first we knew of it.

(Signed) O. H. PARKER.

(The hearing then ajourned).

EXHIBIT.

Claim No. I. Proof of Claim. No.

} ss.

Personally appeared before me, the undersigned, a notary

public in and for said ——— who, being duly ——— says that the ——— is justly indebted to ——— in the sum of ——— dollars, and cents, upon the following claim, to-wit:

All of which is due and payable to ——— alone having given no indorsement or assignment of the same, or any part thereof; and further say that knows of no set-off or other legal or equitable defence to said claim, or any part thereof.

Name, residence.

And subscribed before me this —— day of A. D., 18—.

Witness my hand and seal.

Note: (Across the face in red ink) Jacob G. Chamberlain, receiver, submitted his first claim for $30,805.29 on blank like the one upon which this note is written. He (Chamberlain,) withdrew this claim for $30,805.29 and substituied the one for $8,405.29, and afterwards one for $7,305.29.

(Signed) R. W. AUSTIN.

EXHIBIT.

Claim No. II. Proof of Claim. No.

The State of Alabama, } ss.
Colbert County. }

Personally appeared before me, the undersigned, a notary public in and for said State and county, Jacob G. Chamberlain, receiver of Sheffield and Birmingham Coal, Iron and Railway Company, who, being duly eworn, deposes and says that the First National Bank of Sheffield, Alabama, is justly indebted to Jacob G. Chamberlain, as receiver aforesaid, in the sum of eight thousand, four hundred and five dollars and twenty-nine cents, upon the following claim, to-wit:

Balance in First National Bank of Sheffield, Ala., as shown by my books Oct. 1, 1889, - - $1943 00

Deposit in said bank derived from the sale of said securities of money:

Acceptance of Chamberlain, Wheeler & Co.
Sept. 26, 1889, for - - - - $5120

Acceptance Sept. 27, 1889, - - - - 4880

Proceeds from the above two acceptances, - -	9844 45
Draft drawn by Chamberlain, Wheeler & Co., Oct., 1889, - - - - - - - - - -	4060 28
Amount agreed to be paid by First National Bank on commissions, - - - - - - - - -	1100 00
	$16947 73
Leas amount drawn on checks, - - - - -	8542 44
Balance due on above, - - - - -	$8405 29

All of which is due and payable to said receiver alone, he having given no endorsement or assignments of the same, or any part thereof; and he further says that he knows of no set-off or other legal or equitable defence to said claim, or any part thereof.

(Seal.) Name, JACOB G. CHAMBERLAIN.

Sworn to and subscribed before me this 22d day of February, A. D. 1890.

Witness my hand and notarial seal.

R. H. WILHOYTE, Notary Public.

EXHIBIT.

Claim No. III. Proof of Claim. No.

The State of Alabama, } ss.
Colbert County. }

Personally appeared before, the undersigned, a notary public in and for said State and county, Jacob G. Chamberlain, receiver of Sheffield and Birmingham Coal, Iron and Railway Company, who, being duly sworn, deposes and says that the First National Bank of Sheffield, Alabama, is justly indebted to Jacob G. Chamberlain, as receiver aforesaid, in the sum of seven thousand, three hundred and five dollars and twenty-nine cents, upon the following claim, to-wit:

Balance in First National Bank of Sheffield, Ala., as shown by my books Oct. 1, 1889, - -		$1943 00
Deposit of money in said bank derived from sale of the following securities:		
Acceptance of Chamberlain, Wheeler & Co. Sept. Sept. 26, 1889, for - - -	$5120	
Acceptance Sept. 27, 1889, for - - -	4880	

Proceeds from above two acceptances, - - -	9844 45
Draft drawn by Chamberlain, Wheeler & Co., Oct. 1889, - - - - - - - - - -	4060 28
	$15847 73
Less amount drawn on checks, - - - -	8542 44
Balance due on the above, - - -	$7305 29

All of which is due and payable to said receiver alone, he having given no endorsements or assignments of the same, or any part thereof; and he further says that he knows of no set-off or other legal or equitable defence to said claim, or any part thereof.

(Seal.) Name, JACOB G. CHAMBERLAIN.

Sworn to and subscribed before me this day of May 2, A. D. 1890.

Witness my hand and notarial seal.

R. H. WILHOYTE, Notary Public.

TESTIMONY OF H. B. TOMPKINS.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company.

In re. Intervention of Anniston Loan and Trust Company.

Hearing before the master resumed on Tuesday, the 7th day of July, 1891. First, was offered by counsel for intervenor the deposition of H. E. Garth, of New York, taken by commission before Thomas H. Hubbard, commissioner. Also, refer to such papers of the record in the above stated case as throw light upon the matter set forth in the intervention, which are referred to in amended petition, and are as follows: The original bill and exhibits for foreclosure of mortgages; (2) petition for authority to issue receiver's certificates, and decree of court authorizing issuance of same; (3) decree of

foreclosure of December 3d, 1889. ordering payment of receiver's certificates in controversy; (4) report of Master D. D. Shelby, showing sale of property to Napoleon Hill, trustee, and James C. Neely, trustee, and decree confirming same. Counsel for intervenor then closed his testimony, with privilege to rebut.

Counsel for respondents then offered as a witness Henry B. Tompkins, who testified as follows:

On direct examination:

"During the foreclosure suit of the Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company, I was counsel and general adviser for Jacob G. Chamberlain, receiver of said defendant corporation, and had charge, as associate counsel for the Central Trust Company, of the issuing of receiver's certificates, for five thousand dollars each, numbered 1, 2 and 3, were paid to Charles D. Woodson, president of the First National Bank of Sheffield, to close up an account between the receiver and that bank. This was done after the bank had gotten a judgment against the receiver upon a hearing before the special master in chancery, David D. Shelby, Esq., and the report by him in favor of the bank. These three certificates, 1, 2 and 3, do not enter into the question now being examined into.

On the 13th day of October, 1889, J. G. Chamberlain, the receiver, came to Atlanta, Ga., where I reside, to see me in reference to these certificates in controversy in this intervention, numbered 8, 9, 10, 11 and 12. The result of the conference with the receiver was, that I framed and sent a telegram to Chas. D. Woodson, signed by J. G. Chamberlain, in words and figures following:

'October 13th, 1889.

To Charles D. Woodson,

Care Fifth Avenue Hotel, New York, N. Y.:

Do not place receiver's certificates under any circumstances, as I have given option for their sale. Also return acceptance of $10,000 to me at Sheffield at once. Answer here.'

This telegram was sent from Atlanta, Georgia, on Sunday, the 13th of October, 1889."

Counsel for intervenor objected to witness' statements as to

interview between J. G. Chamberlain and witness, and what witness said was the result of it; because it is illegal and incompetent testimony. Also objects to witness' statement that he had sent a telegram and evidence in regard to the contents of the telegram, for the same reasons, and because there is better evidence.

Witness: "On the same day the following telegram was received at Atlanta, the original of which is in the records in this cause and reads as follows:

'NEW YORK, 13th, 1889.

J. G. Chamberlain,
care H. B. Tompkins, Atlanta, Ga.

Telegram received. Will return you the papers as requested. (Signed) C. D. WOODSON.'"

Mr. Knox, for intervenor: "I object to this testimony on the same grounds as to the contents of the other telegram, because it is illegal and incompetent and is not the best evidence."

Witness (continuing): "In November following I was in New York City at the Fifth Avenue Hotel, having gone there, among other reasons, for the purpose of seeing and confering with C. D. Woodson in reference to these receiver's certificates, having in the meantime had a conference with Mr. Woodson at Birmingham, Alabama."

The intervenor objected to this evidence as incompetent, illegal and irrelevant.

Witness (continuing): "I had a long conference with Mr. Woodson and called his attention to the telegrams above recited. He admitted that he had received the telegram of the 13th of October, 1889, and had replied to it on the same date; that at the time he was in possession of the five receiver's certificates, numbered 8, 9, 10, 11 and 12, and the acceptance for $10,000; that he fully meant to return them to J. G. Chamberlain, the receiver, but that on Monday, the 14th of October, he was induced to sell the certificates and negotiate the acceptance. I asked him to whom the certificates were sold, with the desire of giving immediate notice to the purchaser; but Mr. Woodson declined to inform me; as he also declined to inform me the price for which he sold them. In this interv-

view with Mr. Woodson I represented the receiver and was acting for him in the premises. At that time Mr. Woodson stated that he though the could raise the money and pay the receiver for the proceeds of the draft and the acceptance, and offered to give whatever security he could, by way of mortgage, to hold the receiver harmless."

Mr. Knox, for intervenor: "I object to the foregoing testimony by the witness in reference to the interview with Mr. Woodson, first, because it is illegal and incompetent testimony; second, because Woodson is dead, and it is incompetent for the witness, Tompkins, as agent for the receiver, to testify to a transaction with him; third, because the conversation occurred after the sale of the certificates, and the declarations and statements of Woodson after the sale are not competent to disparage the claim or the title of the intervenor."

Witness (continuing): "Sometime after that I was in Sheffield, Alabama, and had a conversation with Mr. Charles D. Woodson, then president of the First National Bank of Sheffield, and Mr. T. L. Benham, then cashier of that bank; this conversation was in December. At that time I went over with both of these bank officials the accounts of the receiver with the bank, and asked Mr. Woodson why it was that the checks of the receiver could not be paid, if he had deposited to the receiver's account the $17,000 that his books showed on the 22d of October, 1889, and the $6,500 that his books showed on the 29th day of November, 1889, a deposit made as of 5th November. Mr. Woodson admitted that these deposits had never been made, though they had made out deposit tickets, and let the books appear as if that much money had been put in the bank to the credit of the receiver. I interviewed Mr. Benham, away from Mr. Woodson about the same matter, and he admitted the same thing; that is, that the $17,000 and the $6,500 had never been actually deposited. I asked Mr. Benham why, as cashier, he would consent that the books would be so falsified, and he stated that he knew it was wrong, but that he was in a great pressure, and did so at the special and urgent request of Mr. Woodson. Both Mr. Woodson and Mr. Benham admitted that they had led the receiver to believe

that the deposits had been made in such a way as to be subject to his drafts, when in point of fact such was not the case."

The intervenor objects to the witness' statements in reference to these interviews with Benham and Woodson: 1st, because this testimony is illegal and incompetent; 2d, because Woodson is dead, and it is incompetent for the witness, Tompkins, as agent for the receiver, to testify to a transaction with him; 3d, because the conversation occurred after the sale of the certificates, and the declarations and statements of Woodson and Benham after the sale are not competent to disparage the claim or title of the intervenor.

Cross-examination by Mr. Knox:

Q. Do you know when these certificates were turned over to Mr. Woodson? A. They were turned over to him about the 10th of October, 1889.

Q. Where? A. At Sheffield, Alabama, as I understood from Mr. Woodson and the receiver.

Q. When were the certificates 1, 2 and 3, issued on the 19th of September, turned over to him? A. Sometime about that date.

Q. These certificates, both those issued on September 19th, and those issued October 10th, were placed in Woodson's hands to be sold, were they not? A. No; certificates 1, 2 and 3 were not placed in his hands to be sold; they were placed in his hands as payment for a debt due by the receiver to the First National Bank of Sheffield, and Mr. Woodson accepted them as such.

Q. How much did the receiver, Chamberlain, owe the bank on September 19th, 1889? A. Between $14,000 and $15,000; but the amount is accurately shown by the papers in the intervention of the bank in this case. My recollection is, it was fourteen thousand nine hundred and some odd dollars.

Q. The receiver's indebtedness to the bank, what did it consist of? A. Money advanced, as I understand it, by the bank to the receiver, and for which the receiver had given a mortgage upon certain pig iron.

Q. Was that to secure an over-draft to the bank? A. Yes; it was to secure over-drafts and to secure money advanced. I do not know what proportion was over-drafts and what pro-

portion of it was money loaned by the bank and put to the credit of the receiver.

Q. Isn't it a fact that the indebtednes on the 19th of September, 1889, was $972 50, and not $14,000? A. That may be; as I have stated, I do not pretend to testify accurately about these matters, because there was an intervention filed by the bank setting up the mortgage they had upon pig iron; and upon the hearing of that intervention before Mr. Shelby, as special master, the amount due the bank by the receiver was arrived at, decree was taken, and that amount was paid to the bank—at least partly, with these receiver's certificates Nos. 1, 2 and 3.

Q. Now, if the receiver did not owe the bank but $7,900 how is it he sold him $15,000 worth of certificates to pay that indebtedness? A. I take it that the receiver did owe the bank the full amount the decree rendered upon the finding of the master shows.

Q. That is not answering my question. I say, if he did not owe over $7,972.50, how is it the receiver sold to Woodson $15,000 worth of certificates in payment of that indebtedness? A. I do not say that the receiver did not owe over $7,900 to the bank; I say he owed what the decree rendered by the court shows.

Q. How much is that? A. My recollection is it is between $14,000 and $15,000; but I prefer to refer to the decree itself to show the actual amount.

Q. Is it not a fact that these certificates, issued on the 19th of September, were given to Woodson to be sold by him and he was to pay out of the proceeds of their sale the indebtedness of Chamberlain to his bank? A. I do not think so; but such may be the case. My understanding was, all along, that the certificates were turned over to Woodson in full or part payment for what was due to the bank by the receiver.

Q. Were you present when that arrangement was made between Chamberlain, the receiver, and Woodson for the sale of those three certificates? A. No.

Q. Of your personal knowledge, then, you do not know what the trade was between them? A. No, sir.

Q. These certificates issued October 10th, Nos. 8, 9, 10, 11 and 12, were placed in Woodson's hands to be sold, were they

not? A. So I understand, both from Mr. Woodson and Mr. Chamberlain.

Q. You spoke of having been in New York and having an interview with Mr. Woodson, what time was that? A. It was in November, 1889; I think it was somewhere about the 10th or 11th, but would not be positive about that.

Q. When did you go to New York on that occasion? How long had you been in New York when you had this interview? A. I do not remember, perhaps a day or two, perhaps longer.

Q. Did Mr. Chamberlain, go with you? A. He did not.

Q. Was he in New York at that time at all? A. He was not.

Q. You were representing him? A. Yes, sir.

Q. Were you in New York on November 9th, 1889? A. I think it very likely.

Q. Mr. Woodson did execute a mortgage to Mr. Chamberlain, receiver, in New York about the time of his interview, did he not? A. He did.

Q. To secure this amount that the bank owed him? A. To secure that amount and all amounts that might be due the receiver.

Q. You were a subscribing witness to that mortgage, were you not? A. I think so.

Q. Is this that mortgage (handing witness paper)? A. This is a copy. I remember that the mortgage was executed by Mr. Woodson, under my advice that the receiver would take every possible precaution to save the money that was due him.

Q. The $25,000 of receiver's certificates, sold less 6 per cent commission, will amount to $23,500 would'nt it, Judge? A. I presume so, I have not made the calculation. Those notes, dated the 14th of October, 1889, were given in Birmingham sometime after that day, when Mr. Woodson, Mr. Chamberlain and myself met in Birmingham, after Mr. Woodson had disclosed to Mr. Chamberlain that he had sold the certificates, and discounted the $10,000 acceptance, and the notes were dated back; I refer to the notes referred to in the mortgage.

Q. Were you present at the foreclosure sale under this mortgage? A. No, sir.

Q. Was there a foreclosure sale? A. Yes sir.

Q. Did you have anything to do with that foreclosure sale, did you draw up any of the papers? A. Yes, I think I drew up all the papers connected with it.

Q. The property described in that mortgage was sold at that sale, wasn't it? A. Yes; that is my understanding, though I would prefer that the records should speak for themselves, both as to the property and what it sold for. I drew the papers and transfers of the property.

Q. Do you know who purchased it? A. My recollection is that the Alabama Iron and Railway Company bought it.

Q. Did you buy some of that property at foreclosure sale? A. No, I think not.

Q. Was some of it bought for you? A. No, I don't think any of it was bought for me; I don't recollect now that it was. I have had so many transactions in Sheffield that I hardly know what I do own there.

Q. Weren't you there with Mr. White at the time that foreclosure sale was made and bought part of the property? A. I do not recollect that at all.

Q. Who represented you there? A. Mr. White, my brother-in-law, may have represented me, but I do not recollect that he bought any property for me. He may have been there to see what was done and how it sold.

Q. There was a foreclosure of this mortgage made by the receiver? A. Yes.

Q. Who is in possession of that property now? A. The Alabama Iron and Railway Company, as I understand it. Referring to the original papers in the petition and intervention of the First National Bank of Sheffield, filed in the case of the Central Trust Company of New York vs. Sheffield, and Birmingham Coal, Iron and Railway Company, on April 18th, 1889, I find the following: The petition claimed as due the bank the sum of $19,500, besides interest, and that this was secured by a mortgage executed on December 28th, 1888, by the Sheffield and Birmingham Coal, Iron and Railway Company to the bank upon 1,500 tons of pig iron at the furnace in Sheffield, to secure advances upon notes and renewals of notes

up to a limit of $20,000. It is further shown by the original papers that a decree was rendered for $14,981.89 as principal due the bank, and the further sum of $1,498.18 as attorney's fees and interest from September 20th, 1889.

Q. The bank had a mortgage on pig iron to secure that, did they not? A. Yes, sir.

Q. And do you say that the bank released that mortgage on the pig iron and accepted in payment of that debt these certificates, and took the chances on selling them for what it could get in New York? A. That is my understanding.

Q. Is it not a fact that, instead of doing that, these receiver's certificates were placed in Woodson's hands to be sold by him and to pay himself out of the proceeds? A. As I have stated, my understanding is that the receiver and Mr. Woodson agreed upon a price in accordance with the terms of the order authorizing what the certificates should be sold at, and Woodson took the certificates in payment or part payment of that agreed price. I refer to the three certificates numbered 1, 2 and 3.

Q Is it not a fact that this decree that Mr. Shelby rendered distinctly provided that these certificates should be sold and the bank paid out of the proceeds of the sale? A. Yes; the finding that the master made was that the amount due the bank was to be paid by the proceeds of the sale of receiver's certificates authorized to be issued in this cause; but for all that my recollection is as above stated about the agreement between the receiver and the bank.

Q. But you do not know what that agreement was? A. No, except as hereinbefore I have stated it.

Q. This conversation you had with Woodson and Benham in Sheffield occurred after the suspension of the bank, did it not? A. No; I think it occurred a few days before the suspension.

Q. You say it occured in December? A. Yes, sir.

Q. The bank suspended on the 29th of November, did it not? A. I do not remember, it might have been. My recollection is that it did not, but I do not pretend to fix the date. The conversation with Woodson and Benham was had about the time of the suspension, my recollection being that it was before the suspension.

Q. Do you know as a fact that the money, the proceeds of these certificates, were placed to the credit of the Sheffield National Bank in New York? A. I do not know, but I know that Woodson stated that it was placed to Mr. Chamberlain's credit.

Q. You do not know whether it was placed to the credit of the First National Bank of Sheffield in New York by its correspondents there? A. I do not.

Q. Neither Mr. Woodson nor Mr. Benham ever told you that it was not? A. No; I did not investigate the subject.

Q. For aught you know and for aught they told you, the money was placed to the credit of the bank in New York, for which the certificates was sold? A. Yes.

Q. Did you examine the bank-books of the Sheffield Bank and Chamberlain's account with the bank? A. No; except just to glance over the page of the book containing Chamberlain's account at the time I was investigating the matter with Woodson and Benham.

Q. The amount was placed to his credit with the bank, was it not? A. There were figures on the book showing it was, but the two officers told me they were not correct. They were not because it was a falsification, and they admitted it was.

Q. The book showed, and Chamberlain's account, as receiver, showed that amount to his credit there, did it not? A. Those amounts were put on the books as a credit to J. G. Chamberlain, receiver.

Q. Was that amount, so put upon the books, included in this mortgage at the time the mortgage was executed? A. Yes, sir.

Q. The credit on the book constitutes part of the debt secured by the mortgage? A. Yes, sir.

REBUTTAL.

"I wish to make it clear to the master that when I looked over the bank account of the First National Bank of Sheffield with Chamberlain, as receiver, that while the account showed, so far as the bank-books and pass-book were concerned, that Chamberlain had received credit in the matter of deposits for the $17,000 and $6500, yet at the time it was admitted, both by Woodson and Benham, that no such amounts in money had

ever been paid into the First National Bank to the credit of the receiver, and against which he could draw his check. I wish to state further, that a day or two before the bank suspended payment, the receiver, under my advice, drew his check for $1000 and had it presented for payment, and payment was refused. I think that was one or two days before the bank closed. The notes and mortgages given by Woodson to Chamberlain for the thirty odd thousand dollars was taken before it was ascertained that there had really been no deposit of $17,000 and $6500 in the First National Bank to Chamberlain's credit."

CROSS-EXAMINATION.

Q. Is it not a common thing to deposit money in New York on checks on New York in a bank in Sheffield, or other banks throughout the country, and place it to the credit of depositors as money deposited there? A. Do you mean it is a common thing for the owners and holders of checks on New York to deposit them in banks to be collected for them and on their accounts.?

Q. Yes. A. Yes, sir; that is common.

Q. And the money is placed to the credit of the party and payable presently in the bank where deposited? A. Yes, sir.

Q. For aught you know and for aught Woodson and Benham informed you, this money may have been deposited by the Sheffield Bank with its correspondents in New York, and placed to the credit of the bank there, and the bank gave Chamberlain credit as so much money deposited at Sheffield? A. I do not think that can be true, under the statements made to me by Woodson and Benham.

Q. Do you know whether it is or not true from any statement they made you? A. I had no reason to believe that such was the fact. On the contrary, I do not believe such was the fact, because Woodson and Benham both told me the $17,000 and $6500 had been put upon the books without there having been any real deposit by Woodson for Chamberlain.

Mr. Knox, for intervenor: "I object to that, because it is argumentative, and not responsive to my question, and is evasive of my question."

Q. You have already sworn that they did not tell you that

this money had not been placed to the credit of the First National Bank in New York? A. Yes, sir.

Q. You have already testified that you have no reason of knowing from anything Woodson and Benham told you, that this money was not placed to the credit of the First National Bank with its correspondent in New York? A. I do not recollect to have testified to that, and do not think I did.

Q. Do you not know as a matter of fact whether this money was placed to the credit of the First National Bank with its correspondent, or correspondents, in the city of New York, that is, the proceeds of the sale of these certificates. A. I do not.

Q. For aught you know of your personal knowledge, this money may have been deposited to the credit of the First National Bank with its correspondent or correspondents in New York, and by said bank placed to the credit of Jacob G. Chamberland, receiver, at Sheffield, on his pass-book and the books of the bank there? A. I don't know that as a fact.

Q. Do you know of your personal knowledge that it is not a fact? A. No, sir; I don't know of my personal knowledge that the Sheffield Bank did not have a credit in New York.

Q. Do you know of your own personal knowledge that it is not true? A. No, sir.

(Signed) HENRY B. TOMPKINS.

Respondents then introduced the original petition of the receiver for the issuing of receiver's certificates, and the order of court granting authority to issue such certificates.

AGREEMENT BEFORE THE MASTER.

It is agreed before the master that the testimony of Jacob G. Chamberlain shall be taken at Goshen, Virginia, on Friday the 17th day of July, before counsel or some one of them by them appointed to represent them, and the same shall be written out and signed by said Chamberlain, and forwarded to the master.

It is further agreed by counsel on both sides, that they may use and refer to any of the original papers in the suit of Central Trust Company of New York vs. Sheffield and

Birmingham Coal, Iron and Railway Company, and in any of the interventions connected with that suit.

SUPPLEMENTARY TESTIMONY OF H. B. TOMPKINS.

By consent of counsel, Henry B. Tompkins supplements his testimony before the special master in chancery, delivered at Huntsville, Alabama, on the 7th day of July, A. D. 1891, by the following:

In July or August I had a conversation with H. E. Garth, Esq., president of the Mechanics' National Bank of New York City, New York, in relation to the sale of the whole one hundred and fifty thousand dollars ($150,000) receiver's certificates; and at that time, or soon thereafter, furnished to Mr. Garth copies of the petition for issuing the certificates, and the order of court authorizing their issue; and called his attention to the fact that they were to be sold at not less than par, less a reasonable commission.

My recollection is that Mr. Garth was willing to undertake the sale of these certificates for a commission of seven or eight per cent.; and that I told him that the receiver would not allow that much per cent., as they were to be sold at par, less a reasonable commission or per cent.

By Mr. Knox: Judge, you practically represented all the parties to this litigation, did you not? A. Yes, I represented the Trust Company as assistant counsel, and I was the general adviser of the receiver.

Q. The foreclosure proceedings instituted in this case were in the nature of consent proceedings, were they not? Were the proceedings advisory in fact, it was what is called a friendly foreclosure? A. Yes; it was friendly so far as the relation of the Trust Company and the defendant corporation were concerned, except as to some minority bondholders, who were represented by Alfred Parrish, Esq.

Q. Did they appear and litigate in this case? A. No. They filed a petition, but it was disposed of by a hearing before Judge Pardee.

Q. And abandoned? A. And abandoned.

Q. Who prepared the foreclosure papers, did you? A.

The bill and the decree were prepared in New York by the leading counsel for the Trust Company, Butler, Stillman & Hubbard.

Q. With your knowledge and approbation? A. No, not with my knowledge or approbation. I was associate counsel, and simply carried out that which they desired me to do.

Q. They did not appear in court there? A. One of their firm appeared before Judge Pardee on one or two occasions. I represented the case mainly during its progress.

Q. At what time was the representative of their firm there, if you recollect? A. He went to New Orleans when the case was first presented to Judge Pardee.

Q. Any other time? A. I think on one occasion a representative of that firm was in New Orleans with me when some order was taken.

Q. You don't remember what order? A. No.

Q. Nor when the representative of that firm was there? A. I do not remember that either.

Q. You remember only those two occasions when the representative of that firm was there? A. Two occasions, in New Orleans, when orders were taken before Judge Pardee.

Q. During the rest of the time you represented the case in court? A. Yes, sir.

OBJECTION TO RE-EXAMINATION OF H. B. TOMPKINS.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

The Central Trust Company
vs.
The Sheffield and Birmingham Coal, Iron and Railway Co.

Intervention of the Anniston Loan and Trust Company.

Now comes the intervenor in the above entitled cause and objects to the re-examination of Henry B. Tompkins, taken in Cincinnati, Ohio, by agreement of counsel, so far as the same details a conversation or any transaction between said Henry B. Tompkins and H. E Garth, president of the Mechanics' National Bank, upon the following grounds:

1st. That the statements of the said Tompkins to the said Garth and of the said Garth to said Tompkins, alleged to have been given in said conversation, is incompetent, illegal and irrelevant testimony against the intervenor.

2nd. That the testimony would be competent only to contradict the witness Garth, and no predicate was laid for the purpose.

3d. That the statements of said Garth to said Tompkins, or of said Tompkins to said Garth, in the absence of D. T. Parker, or the intervenor, are not competent against the Anniston Loan and Trust Company.

(Singed.) JNO. B. KNOX, Sol. for Intervenor.

TESTIMONY OF J. G. CHAMBERLAIN.

State of Ohio—County of Hamilton, } ss.
City of Cincinnati. }

Deposition of Jacob G. Chamberlain, taken under stipulation between counsel herein.

On this 17th day of July, A. D. 1891, before me, John J. Taylor, Jr., a notary public within and for the county of Hamilton, and State of Ohio, personally appeared Jacob G. Chamberlain, to be examined as a witness for the respondents in the case of the intervention of the Anniston Loan and Trust Company in the foreclosure suit of the Central Trust Company of New York against the Sheffield and Birmingham Coal, Iron and Railway Company and another, pending in the circuit court of the United States for the northern district of Alabama.

The testimony of the above named witness to be used before D. D. Shelby, Esq., master in chancery, at Huntsville, Alabama, appointed by the circuit court of the United States for the northern district of Alabama in the above entitled cause.

Present, representing the Anniston Loan and Trust Company as its solicitor, John B. Knox, Esq.

Present, representing respondents as their solicitor, Henry B. Tompkins, Esq.

Jacob G. Chamberlain, being first duly cautioned and sworn, deposes and says as follows:

Direct-examination by Mr. Tompkins:

Q. Mr. Chamberlain, were you or not ever receiver of the Sheffield and Birmingham Coal, Iron and Railway Company in the foreclosure suit against that company brought by the Central Trust Company of New York, in the circuit court of the United States for the northern district of Alabama? A. I was.

Q. Mr. Chamberlain, as such receiver, did you or not ever apply to the court for authority to issue one hundred and fifty thousand dollars of receiver's certificates? A. I did.

Q. Is this the petition made by you? (Hands witness papaper). A. Yes, this is the petition.

Q. Is this the order authorizing you to issue the certificates? (Hands witness another paper). A. Yes, sir; it is.

Q. Mr. Chamberlain, I will read the order: "It is ordered that said receiver be, and he is hereby, authorized and empowered to issue receiver's certificates or debentures in a sum not exceeding one hundred and fifty thousand dollars ($150,000), bearing a rate of interest not exceeding seven (7) per cent. per annum, said certificates to fall due from time to time in thirty-six (36) months after date thereof; and that said receiver be authorized and empowered to sell said certificates at not less than par, less a reasonable amount to be paid for the negotiation of the same, and the proceeds thereof to be applied for the purposes hereinbefore mentioned." Are these words in the order? Are not those words that I read in the order? A. Yes, sir.

(The foregoing question and answer are objected to by Mr. Knox, on the ground that the order itself is better evidence of what it contains.)

Q. Mr. Chamberlain how many certificates did you issue under this authority? A. One hundred and fifty thousand dollars.

Q. At what rate did you negotiate and sell them? A. There were three of them I think, at six (6) per cent.

Q. You mean there were three of them that were negotiated at six (6) per cent. discount? A. Discount, yes.

Q. Did you not sell them at par, less six (6) per cent. discount for negotiation? A. Well, that is the way I sold the three (3) that I gave to Mr. Woodson.

Q. That is the way you sold the three you gave to Mr. Woodson? A. Yes, sir.

Q. What do you mean by giving them to Mr. Woodson? For what purpose did you transfer them to Mr. Woodson? A. To pay a debt that the receiver owed the First National Bank of Sheffield.

Q. What numbers were those certificates? A. I think one, two and three.

Q. For what amounts each? A. For five thousand dollars each.

Q. Then you sold these three certificates for five thousand dallars each, numbers one, two and three, to Charles D. Woodson, president of the First National of Sheffield, to pay a debt due to that bank, did you, as receiver? A. Yes, sir.

Q. At what rate of discount for negotiation did you dispose of the other receiver's certificates that you yourself did dispose of? A. One hundred and ten thousand dollars ($110,000) worth was sold at a rate of discount of about seven (7) per cent., possibly a little more, I think a fraction over that, between seven and eight per cent.; I cannot tell exactly.

Q. Then you sold as receiver, in addition to the fifteen thousand dollars ($15,000) worth of certificates that you disposed of to Woodson, one hundred and ten thousond dollars of receiver's certificates at par, less a discount of a little over seven per cent. for the negotiation of the same? A. Yes, sir.

Q. Did you yourself get the money for all these certificates except the three you sold to Woodson—all those other certificates? A. The one hundred and ten thousand dollars ($110,000), yes, sir.

Q. Mr. Chamberlain, there were five other certificates for five thousand dollars ($5,000) each, numbered eight (8), nine (9), ten (10), eleven (11) and twelve (12), dated the 10th day of October, 1889, that are set forth in this intervention of the Anniston Loan and Trust Company. Did you yourself sell those certificates or not? A. I did not.

Q. If those certificates were sold or disposed of after the 13th of October, 1889, were they, or not, sold or disposed of by your consent? A. They were not sold by my consent.

Q. Do you, or not, know of your own personal knowledge that these five certificates sued for by the Anniston Loan and

Trust Company were ever sold at all? A. I do not know of my own personal knowledge.

Q. If they were sold, do you know for what price they were sold, of your own knowledge? A. I do not know for what price they were sold.

Q. If these five certificates were ever sold, Mr. Chamberlain, did you or not ever receive from any person at any time any money for these certificates so sold? A. I never received any money for them.

Q. Did or did not the proceeds of these five certificates sued for by the Anniston Loan and Trust Company ever come into your hands at any time or in any way, while you were the receiver, or since you have ceased to be receiver? A. Never did.

Q. Mr. Chamberlain look at this mortgage, and the transfer attached to it, and state whether or not you recognize it as a mortgage given by Chas. D. Woodson to you as receiver upon certain real estate lying in and near Sheffield, Alabama? (Hands witness paper) A. Yes, sir.

(It is hereby stipulated and agreed between counsel that there is a copy of this mortgage already introduced in evidence before the master at Huntsville, Alabama, and that the original will be produced before the master or the court if desired by either party, with the understanding that the same is not to become a part of the records; but may be used to perfect the copy already introduced, if desired. And the transfer of this mortgage by J. G. Chamberlain to the Alabama Iron and Railway Company on the first day of September, 1890, attached to the mortgage, is also introduced, a copy of which transfer will be made and attached to the copy of the mortgage already introduced before the master. And it is stipulated further that either party shall have the right to use and refer to the original mortgage as if in evidence before the master).

Q. Mr. Chamberlain, upon this mortgage, in red ink, is the following:

"Satisfied by sale of the property 30th day of October, 1890. J. G. Chamberlain, late receiver. November 6th, 1891." Did you or not foreclose this mortgage? A. I did.

Q. Was the property mentioned and described in this mortgage put up and sold? A. Yes, sir, it was.

Q. At what price were lots one (1) and (2) in block No. 2 in the city of Sheffield sold? A. Twenty-five hundred dollars ($2,500) for both lots.

(Question and answer objected to by Mr. Knox).

Q. At what price was the undivided one-half interest in the south half of the east half of the northwest quarter of section three, township four, range eleven, in Colbert county sold? A. One thousand dollars ($1,000).

Q. Then the amount realized by the foreclosure of this mortgage was thirty-five hundred dollars ($3,500)? A. Yes, sir.

Q. Who bid in this property? A. The Alabama Iron and Railway Company.

Cross-examination by Mr. Knox:

Q. You spoke of three certificates for five thousand dollars each that were sold. By whom were these certificates sold? A. I sold them.

Q. Did you not place those certificates in the hands of Mr. Woodson to be sold? A. I did not.

Q. How much did you owe the First National Bank of Sheffield on the 19th of September, 1889, when these three certificates were issued? A. Somewhere between fourteen thousand dollars ($14,000) and fifteen thousand dollars ($15,000), I cannot now state the exact amount.

Q. Did the bank have any security for that indebtedness? A. They had been given security on pig iron.

Q. For how much? A. To cover a loan to the amount of twenty thousand dollars ($20,000) or loans.

Q. They had a mortgage on about fifteen hundred (1,500) tons of pig iron, did they not? A. Yes, sir.

Q. As security for your indebtedness to the bank? A. Yes, sir.

Q. About what was that iron worth a ton? A. Oh, from twelve to thirteen dollars.

Q. From twelve to thirteen dollars per ton? A. Yes, sir, at that time.

Q. Do you say then that the bank with that security for its indebtedness accepted these receiver's certificates at par in

payment of that indebtedness taking its chances of selling them? A. I do, less the six per cent discount. They are very glad to do it.

Q. Do you know at what price these receiver's certificates were sold? A. I do not know anything about it.

Q. How much were you credited by the bank on your account as the proceeds of the sale of those certificates? A. The full amount, less the per cent that was allowed the bank for selling them or for taking them.

Q. How much was that? I think it was six (6) per cent.

Q. That is what you say? A. Yes, sir.

Q. It is not true, then, that you placed those certificates in the hands of Mr. Woodson to be sold, and out of the proceeds of the sale pay your indebtedness to the bank? A. No, sir; it is not true.

Q. As a part of that transaction he cancelled the mortgage that he had on your pig iron—or the bank did? A. Yes, sir; and gave up the notes.

Q. You knew Mr. C. D. Woodson very well? Yes, sir.

Q. He is dead now, is he not? A. They say he is.

Q. That is your understanding and information? A. Yes, sir.

Q. There is an administrator of his estate, who is the administrator of his estate, do you know? A. Mr. Austin.

Q. Mr. Austin who was afterwards receiver of the bank? A. Yes, sir; previously receiver of the bank.

Q. You spoke of some other certificates that were issued by you. How many were there? One hundred and ten thousand, I believe you said? A. That I sold? Yes, sir.

Q. Did you sell them yourself? A. Yes, sir. I arranged with the Banking Company, Steiner Brothers.

Q. You sold them through an agent? A. Yes, sir.

Q. Just as you undertook to sell the other certificates, did you not? A. I went with Steiner Brothers to the party who bought the certificates, and made the negotiations with them.

Q. But you had placed them for sale in the hands of Steiner Brothers? A. Yes, sir.

Q. How much commission for selling did they get? A. They were sold according to the order of court. I did not know what commission they got.

Q. Didn't you employ them to sell them? A. Yes, sir.

Q. How much? A. Well, the commission amounted to between seven and eight per cent. somewhere, I cannot state exactly what. I do not know how much they got.

Q. That is immaterial. How much did you agree to pay them. A. Somewhere between seven and eight per cent.

Q. It was over seven? A. Yes, sir; it was something over seven per cent.

Q. Was it under eight per cent.? A. I think it was.

Q. How much autual money did you get, Mr. Chamberlain, for the sale of those certificates? A. Well, I got the face value af them, less this per cent

Q. You do not recollect exactly what it was? A. No, sir.

Q. Your recollection now is that it was under eight and over seven per cent? A. Yes, sir.

Q. This is as near as you can come to it? A. Yes, sir.

Q. Was there more than one lot of certificates sold by Steiner Brothers for you? A. No, sir.

Q. Only one? A. Only one, yes, sir.

Q. All sold at one time? A. Yes, sir.

Q. To whom? A. To Isadore Newman, of New Orleans.

Q. The five certificates in controversy in this suit you placed in the hands of Mr. C. D. Woodson, did you, to be sold by him as your agent? A. Yes, sir.

Q. There was also at the same time an acceptance of ten thousand dollars ($10,000) that you placed in his hands, did you not, Mr. Chamberlain? A. No, sir; not at the same time.

Q. Well, you did place an acceptance in his hands? A. In the regular course of my business two acceptances were placed in the hands of the bank, amounting to $10,000.

Q. To be negotiated for you as ten thousand dollars? A. To be placed to my credit. I supposed that he would get them re-discounted.

Q. You wanted him to discount the acceptance for you, did you not? A. He had been doing it right along and I put them in there with that purpose; they being discounted and placed to my credit.

Q. To whom was that acceptance negotiated? A. I do not know. You mean who he sold it to?

Yes. A. I do not know anything about it.

Q. Have you ever seen or heard from that acceptance from that time to this? A. I should think it was returned back with the checks of the bank; but of this I am not sure. I do not remember of seeing it since.

Q. Did you ever pay it? A. Yes, sir; it was paid.

Q. Did you as receiver? A. It was paid by Chamberlain, Wheeler & Company, the parties I drew it on.

Q. It was paid by you—through you as receiver, was it not? A. Chamberlain, Wheeler & Company sold our iron, and I made drafts on them from time to time, when I had shipped a certain amount of iron, say ten thousand dollars worth. I drew on them for seventy-five (75) per cent. of the sale value of that iron.

Q. Now, Mr. Chamberlain, that acceptance was an acceptance issued by you as receiver, was it not? A. It was a draft drawn by me as receiver.

Q. An evidence of indebtedness, was it not? A. Yes, sir.

Q. It was negotiated by Mr. C. D. Woodson, was it not, as president of the First National Bank of Sheffield? A. I have no doubt but that it was.

Q. Do you know that it has been paid? A. I know that it has been paid.

Q. Well, that is what I want to know. You, as receiver of this company, arranged for the payment of that draft, did you not. A. Yes, sir. It was accepted by Chamberlain, Wheeler & Company, and became negotiable paper.

Re-direct examination by Mr. Tompkins.

Q. Mr. Chamberlain, let us see exactly what you mean by this acceptance. As I understand it there were two acceptances; they were drafts drawn by you as receiver upon Chamberlain, Wheeler & Company, who were the agents to sell the iron manufactured by the furnace of which you were in charge; and these two acceptances were for money due by Chamberlain, Wheeler & Company for iron that they had sold; is that so? A. Yes, sir.

Q. Then Chamberlain, Wheeler & Company owed the money called for by these acceptances to you as receiver? Is that a fact? Yes, sir; they owed me the amount of money that I would draw for.

Q. And these two papers were placed in the hands of Mr. C. D. Woodson, as president of the First National Bank, to be sold, and the proceeds to be placed to your credit as receiver in the First National Bank, is that so? A. I do not know whether it would be sold or not, or whether he kept them until they were paid. I put them in as any other negotiable paper, and I do not know whether he discounted them, or whether he held them or sold them to somebody else.

Q. They were to be paid, not by you, but by the acceptors, Chamberlain, Wheeler & Company? A. Yes, sir.

Q. And therefore you did not pay these acceptances yourself, but they were paid, if at all, by Chamberlain, Wheeler & Company? A. I had nothing more to do with them after they were put into the hands of the bank. They discounted them as far as I was concerned, and gave me credit for the amount of the same, less the discount. What they did with the papers I do not know.

Q. Did Chamberlain, Wheeler & Company pay these acceptances? A. Yes, sir.

Q. You did not pay them, did you? A. No, sir.

Q. As receiver? A. No, sir.

Q. Explain all about these acceptances, and your course of dealing with the bank concerning acceptances? A. The First National Bank of Sheffield had discounted all the drafts that I drew on Chamberlain, Wheeler & Company, and placed the same to my credit. There may have been a dozen or more up to that time.

Q. Is that all you wish to say? A. I do not wish to add anything more.

Re-cross-examination by Mr. Knox:

Q. Mr. Chamberlain, when Chamberlain, Wheeler & Compony paid these acceptances, they charged it to you, did they not? A. Undoubtedly they did.

Q. Undoubtedly, yes. It was really then paid with your money which they had to your credit? A. It was paid from money which they received from the sale of pig iron, which they collected as our agents.

Q. Was that acceptance drawn at sight, or at thirty days, or at sixty days, or how was that? A. I think they were at

ninety days—ninety day drafts. None of them were sight drafts.

Re-re-direct examination by Mr. Tompkins.

Q. Mr. Chamberlain, did you ever have any telegraphic correspondence with Charles D. Woodson about these five receiver's certificates sued for by the Anniston Loan and Trust Company? A. I did.

Q. Please look at this telegram, and state whether or not it is a copy—an exact copy of one sent by you from Atlanta, Georgia, to Charles D. Woodson, at Fifth Avenue Hotel, in New York city, on the 13th of October, 1889? (Hands witness paper.)

(Question objected to by counsel, Mr. Knox, on the ground that it is incompetent, illegal testimony because there is better evidence; and because the witness, Chamberlain, is not competent to testify as to a transaction with C. D. Woodson, who is dead.)

A. This is an exact copy of a telegram that I sent to C. D. Woodson on the 13th day of October, 1889.

(Mr. Knox objects to the answer immediately above given, for the same reasons and on the same grounds that he objects to the preceding question).

Q. What did you do with the other paper of which this is a copy? A. Well, that was left at the telegraph office? Q. Where? A. At Atlanta, Georgia.

(Mr. Knox objects to the preceding question and answer for the same reason and upon the same grounds that he objects to the second preceding question and answer.)

(This telegram is marked with the initials of the notary "J. J. T. jr." for the purpose of identification; and it is stipulated and agreed between counsel that a copy of said telegram may be hereafter made and attached to this testimony.)

Q. Mr. Chamberlain, please examine this and state whether or not this is the original telegram received by you on the 13th of October, 1889, at Atlanta, Georgia, from C. D. Woodson, in reply to the telegram sent by you, which you have just testified about?

(Mr. Knox objects to this question on the ground that it is

incompetent, illegal testimony, because there is better evidence; because the witness, Chamberlain, is not competent to testify as to a transaction with C. D. Woodson, who is dead) A. Yes, sir; this is the answer I received.

(Telegram marked with the initials of notary "J. J. T., Jr." for the purpose of identification; and is hereby stipulated between counsel that a copy of said telegram may be hereafter made and attached to this testimony).

Q. Mr. Chamberlain, what were the papers referred to in these telegrams from you to C. D. Woodson, and from C. D. Woodson to yourself?

(Question objected to by Mr. Knox on the ground that the telegrams themselves are the best evidence of what they mean, and on the same grounds above stated to the preceding questions already objected to.)

A. The receiver's twenty-five thousand dollars worth of receiver's certificates; I cannot recall their numbers now— the ones sued for in this cause— and any other papers in his hands which he had not used.

Q. What were the particular papers? A. These drafts which I placed in his hands as president of the bank.

Q. What drafts do you mean? A. The two drafts amounting to ten thousand dollars on Chamberlain, Wheeler & Company.

Q. Are these the same two drafts about which you have testified? A. Yes, sir.

Q. Did you ever see Mr. Woodson after the 13th of October. A. Yes, sir.

Q. Where? A. In Sheffield.

Q. Did you or not have any conversation with him about these certificates and these two drafts amounting to ten thousand dollars? A. I did.

(Question and answer objected to by Mr. Knox on the ground that the witness is incompetent to testify against C. D. Woodson; and, second, because the conversation occurred subsequent to the same, and the declarations of Woodson are not competent to disparage our title..)

Q. What did Mr. Woodson say in reference to these five

receiver's certificates, and the drafts? A. He said he had received my telegram and answered it, and intended to return them to me, as he had said in the telegram; but that the pressure was so hard upon him Monday that he was nearly frantic, and he disposed of them.

(Same objection by Mr. Knox as he made to the next preceding question and answer is made to the last question and answer above.)

Q. Did he tell you or not what he realized for the receiver's certificates? A. He did not tell me.

Q. What did he say? A. He declined to tell me.

Q. Mr. Chamberlain, look at that check dated Sheffield, Alabama, November 29th, 1889, drawn by you, as receiver, on the First National Bank of Sheffield, in favor of J. B. Carrington, and state whether you drew that check? A. I did.

Q. Is that Mr. Carrington's endorsement on the back of it? A. Yes, sir, it is.

Q. Was it paid? A. No, sir.

Q. When did the First National Bank of Sheffield fail? When did it cease payment? A. I presented that, I think, on the 29th day of November, and I think that is the day they ceased to pay.

(This check here spoken of, for one thousand dollars, is marked with the initials of the notary, "J. J. T. Jr.", for the purpose of identification; and it is hereby stipulated and agreed that a copy of the same may be hereafter made and attached to this testimony.)

Q. Mr. Chamberlain, did you or not ever have any conversation with Charles D. Woodson, as president, and F L. Benham, as cashier, of the First National Bank of Sheffield, just before or about the time it ceased to pay and failed, in relation to deposits made upon the books of the bank to your credit as receiver? A. Yes, sir; I had some talk with him about it.

Q. It appears by exhibit to testimony delivered by Mr. Benham in this cause, that seventeen thousand dollars ($17,000) was to your credit as of the 14th of October; and sixty-five hundred dollars ($6500) on the 29th of November. Do you know whether or not any such amounts of actual

money were put by the bank to your credit? A. I know that they said that they had not money enough to pay, that they could not pay. That they would not allow me to check against them, that they could not make any payments on it.

Re-re-cross-examination by Mr. Knox:

Q. Did or did not these conversations you have referred to occur about the time of the failure of the bank, Mr. Chamberlain? A. It was some time after Mr. Woodson's return from New York; between that and the time the bank failed. I presume I talked with him a dozen times about it.

Q. I want to ask about the conversation you have just detailed. That occurred between the time Woodson returned from New York and the time of the failure of the bank? A. Yes, sir.

Q. You say that he told you he had been hard pressed and had sold the certificates? A. He said he had disposed of them.

Q. And also the acceptance? A. Yes, sir.

Q. This check for one thousand dollars was the only check you drew on the money that was not paid, was it? A. I am not sure about that.

Q. Well, your best recollection, Mr. Chamberlain? A. Well, my best recollection is that it is, but I asked the cashier many times if he could pay checks, if I drew them, and many times he said he could not, and I only drew checks when he said he could pay, except the one for $1,000.

Q. That was the day the bank failed, was it not?

(The part of the above answer in ink, commencing with the words, "But I asked the cashier", etc., and ending with the words, "The one for $1,000"; and not typewritten is objected to by counsel for intervenors, because the same has been added to the deposition by the receiver, or some one else, since his testimony was taken, and without consent of opposing counsel and not under oath.)

A. Yes, sir.

Q. They said they could not pay because they did not have the money to pay with. That is what they said, did they not? A. They said they could not pay it. They refused to pay it.

Q. Don't you know, Mr. Chamberlain, that that is the explanation that they gave; that they did not pay because they did not have the money? A. No, I don't, because I did not present the check.

Q. How do you know they refused to pay it? A. Because it was returned to me, and was not paid; and the party to whom it was made payable told me.

(The answer to the last question is objected to by Mr. Knox because the same is hearsay.)

Q. Of your own personal knowledge, then, you do not know that they refused to pay the check? A. I did not present it. They did not refuse payment to me.

Q. And all you know is what Mr. Carrington told you? A. I know what Mr. Carrington and others told me. Mr. Woodson told me he could not pay it.

Q. And he told you that the reason he did not pay it was because he could not; is not that true? A. Yes.

Q. You say that Mr. Woodson and Mr. Benham told you that this money had been placed to your credit in the bank? The $17,000? A. Yes, sir; I expect they did.

Q. Your understanding was that that was the proceeds of the sale of the certificates, was it not, Mr. Chamberlain? A. Not exactly.

Q. What was the amount placed to your credit, if it was not the proceeds of the sale of the certificates? Did he owe you anything else? A. Yes, sir.

Q. I mean as receiver? A. Yes, sir.

Q. The acceptance and the receiver's certificates were what made up the indebteness of the bank? A. No, sir; I had other credits there.

Q. What were they? A. Money deposited.

Q. How much? A. I do not remember exactly how much it was. I know I deposited only a short time before that four thousand dollars in a New York draft.

Q. What was the date of that draft? A. I cannot tell.

Q. About when? A. A short time before I telegraphed Mr. Woodson not to sell those papers, the same week.

Q. You had already deposited four thousand dollars, had not? A. Yes, sir.

Q. Anything else? A. Probably some other sums to my credit in the bank at the same time.

Q. That is then, what made up your credit in the bank was such money as you deposited and the proceeds of the sale of the certificates and the acceptances? A. Yes; but I go back to the other statement I made, that he wanted to put a credit to me of some sums, I do not remember exactly what the amount was, but I think it was not quite seventeen thousand dollars, but a less sum than that; and that, he stated, was something like what he got for the certificates.

Q. It was seventeen thousand dollars less five hundred dollars, was it not? A. It may have been that.

Q. And you objected to that? A. Yes, sir. I told him that he had no business to sell at any such price.

Q. And then he put the seventeen thousand dollars to your credit? A. No, I don't concur in that question you ask.

Q. Didn't he put the the seventeen thousand dollars to your credit? A. He might have done so.

Q. Was it not your pass-book—your bank book? A. The amount he put on my pass-book amounted to some twenty odd thousand dollars to twenty-three thousand and some odd dollars.

Q. Made up of two items, one of seventeen thousand dollars and one of six thousand five hundred dollars? A. Yes, and there was another, making the credit thirty-two thousand dollars or thirty-three thousand dollars. There was over thirty thousand dollars; I won't, I can't say how much.

Q. That deposit that you speak of, of four thousand six hundred dollars and twenty-eight cents, was made on the 28th of October, was it not? A. No, sir; it was not at that time.

Q. When was it? A. It was, I think, about—somewhere between the 1st and the 10th of October.

Q. Are you not mistaken? A. I do not think I am. I do not know when they gave me credit for it. I cannot state that.

Q. Well, where is that pass-book of yours? A. I suppose it is with the papers in Sheffield.

Q. I would be obliged if you would produce that book if you can find it, and offer it to the court in evidence—the de-

posit book of yourself with the bank. A. You can secure it through the company, but not through me.

Q. You mean the Alabama Iron and Railway Company? A. Yes, sir.

Q. They entered on your books these deposits as they were made, didn't they? In your ordinary deposit or pass-book? A. Sometimes they were and sometimes they were not. About once a month they were generally entered up.

Q. That is the way you conducted the business of making deposits, and only having them entered once a month? A. About once a month they settled up their books.

Q. But when you made a deposit it was entered on your pass-book, was it not? It usually was, was it not? A. I cannot say whether it was or not. I do not know whether it was or not. We were in the same building; there was only one door between us in the building, and when we wanted to deposit we took our things in and deposited. As a usual thing, though, it was not entered at once on the pass-book.

Q. That is they way your business was conducted? Was it usual or unusual to enter? A. It was unusual at the time the deposits were made.

Q. It would be entered, though? A. Yes, sir.

Q. After this deposit of seventeen thousand dollars and the the deposit of sixty-five hundred dollars was entered to your credit on the bank books, you drew checks on the bank, did you not? A. I drew this one check.

Q. Did you draw no others? A. I do not think I did after they had given me full credit for all they owed me.

Q. Do you swear you did not? A. Yes, sir; to the best of my belief.

Q. Did you not draw a check on the bank on the 13th of November for one hundred and fifty dollars and eight cents ($150.08)? A. I might have done it.

Q. You have just sworn that you did not? A. Well, I think I did not after they had made full credits; that credit was not put on the pass-book at that time.

Q. The credit of seventeen thousand dollars was not put? A. No, sir; not when I made several drafts soon after October 13th.

Q. Were you present when it was entered? A. I think I was, when the full credits were entered on pass-book.

Q. Do you swear you were? A. Well, I swear to this, that I was back and forth from one room to the other at the time they were talking about entering it, and—

Q. Do you swear you were present when Mr. Benham made the certificate of deposit of seventeen thousand dollars to your credit on the bank books? A. Well, I only swear that I was in the bank at the time when the full credits were made.

Q. Will you swear that that entry was not placed on the books of the bank on the 22d day of October, 1890? A. I cannot say when they placed it on their books, I do not know.

Q. Will you swear that the deposit of seventeen thousand dollars was not also, at the same time, on the 22d of October, placed to your credit on your pass-book? A. To the best of my knowledge and belief, it was not.

Q. Will you swear to that? A. I will swear no other way than that.

Q. Your answer then is that you do not know, but that your belief is that it was not? A. I swear to the best of my knowledge and belief it was not.

Q. According to your knowledge and belief, when was it placed on your pass-book? And when will you swear it was placed there? A. The amount they finally agreed to place on the pass-book, to the best of my recollection, is that it was but a short time before the failure of the bank.

Q. How long? A. I cannot say.

Q. Can you come anywhere in the neighborhood of it? A. I am satisfied that the credit of seventeen thousand dollars and the sixty-five hundred dollars were given to my credit at different times; I know that is true.

Q. And you are correct, are you not, as to the sixty-five hundred dollars being placed to your credit a short time before the bank failed? Are you not mistaken in saying that the seventeen thousand dollars was not placed to your credit on the 22d of October? A. If it was put on our pass-book I objected to it, and would not receive it.

Q. That is not an answer to my question? A. Well, it is the best I can give you.

Q. Will you undertake to swear when it was placed on your pass-book? A. No, I will not.

Q. Will you undertake to swear that it was not placed on the 22d day of October—the seventeen thousand dollars? A. If it was it was done without my knowledge at that time.

Q. When was it you reported to the federal court that this money was on deposit to your credit in the bank? A. What I reported to the court was the correct day.

Q. When was that? A. I cannot tell you.

Q. It was after the sale of the certificates, was it not? A. It was after the 13th of October.

Q. It was before the failure of the bank? A. Yes, sir.

Q. How long? A. I am not clear on that point, because I know there was a settlement that he wanted to get at. They had gone to work and given me credit in the bank for a certain amount of money that Woodson had told Benham to so do; I had no knowledge of what it was, did not know anything about it, and when I learned what it was I immediately went to the bank and told them that I would not receive any such credit as that.

Q. You would not receive the credit of seventeen thousand dollars; you wanted a credit of twenty-three thousand, five hundred dollars? A. After I had that talk with Benham—I will not say with Woodson at that time—I went to Woodson after that, and he said to me, "The bank is going to be a loser if I give you credit over," a certain amount, I forget, sixteen or seventeen thousand dollars. I told him that was none of my business; that he should not have sold the certificates—he had no business to sell them for any less than the court authorized him to sell for, and what it was understood they should be sold for when he undertook to sell them. And sometime after that, after conferring with Judge Tompkins, the credit was changed, and I presume the dates on the pass-book, were changed also to correspond. This is the best of my recollection.

Q. Woodson agreed to put the whole, the full amount to your credit? A. They did.

Q. That was when you made report to the court? A. I suppose it was. What I did report was correct.

Q. You reported to the court the amount of twenty-three

thousand, five hundred dollars, did you not? A. I think that was the amount.

Q. It was after the talk with Woodson in which he agreed to put the whole amount to your credit? A. Yes, sir.

Q. Where are you living now, Mr. Chamberlain? A. Goshen, Virginia.

Q. Have you seen Judge Tompkins' testimony in this case? A. In part.

Q. When did you see it? A. This morning.

Q. He handed it to you? A. Yes, sir.

Re-re-re-direct-examination by Mr. Tompkins:

Q. Mr. Chamberlain, when you conversed with Mr. Woodson about his putting certain amounts of money to your credit in the bank that have been spoken of it the examination, did you understand that he was actually to put money in the bank to your credit? A. No, sir; he was not. He said he could not do it, that the money had been used to pay off debts he had in New York—merely put there to show.

Q. Then in point of fact there never was any actual money put in bank to your credit as receiver on account of the sale of these five receiver's certificates for five thousand dollars each? A. There never was.

Re-re-re-cross-examination by Mr. Knox:

Q. Were you running the bank, Mr. Chamberlain? A. No, sir.

Q. Were you keeping the books of the bank? A. No, sir.

Q. Do you know what money went into the bank either at Sheffield or in New York of your personal knowledge? A. I did not handle any money in the bank; I only know what Mr. Woodson and Mr. Benham told me.

Q. For aught you know, Mr. Chamberlain, this money went to the credit of the First National Bank of Sheffield in New York, the proceeds of the sale of the certificates? A. I do not know anything about it.

EXHIBIT C. J. J. T., JR, NOTARY.

Sheffield and Birmingham Coal, Iron and Ry. Co.

No. 241. Sheffield, Ala., Nov 29, 1889.

Pay to the order of J. B. Carrington $1,000.00, one thousand dollars.

SHEFFIELD AND BIRMINGHAM COAL, IRON AND RY. CO.
J. G. Chamberlain, Receiver.

To First National Bank,
Sheffield, Ala.:

Endorsed: Presented to T. L. Benham, cash., who stated that the bank could not pay.
Sheffield, Ala., Nov. 29, '89. S. B. M.

J. B. CARRINGTON.

13th Oct., 1889.

To Charles D. Woodson,
Care Fifth Avenue Hotel,
New York, N. Y.:

Do not place receiver's certificates under any circumstances, as I have given option for their sale. Also return acceptance of ten thousand dollars to me at Sheffield at once. Answer here.

J. G. CHAMBERLAIN.

(Copy of telegram dated Oct. 13, 1889.)

To J. G. Chamberlain:

Deliver to Woodson personally at two-twenty P. M. your telegram this P. M.

TELEGRAPH OFFICE, 5TH AVE. HOTEL.

(J. J. T., Jr., Notary). (Copy of telegram.)

Atlanta, Ga, Oct. 13, 1889.

Dated New York, 13.
To J. G. Chamberlain,
Care H. B. Tompkins, Atlanta:

Telegram received. Will return you the papers as requested.

C. D. WOODSON.

The State of Alabama, }
Colbert County. }

Know all men by these presents, That I, Jacob G. Chamberlain, as receiver for the Sheffield and Birmingham Coal, Iron and Railway Company, by virtue of orders and decrees of the honorable circuit court of the United States for the northern district of Alabama, at Huntsville, in the case of Central Trust Company of New York vs. Sheffield and Birm-

ingham Coal, Iron and Railway Company and another, do hereby sell, transfer, assign and make over to the Alabama Iron and Railway Company, all the right, title, interest, claim and demand, in law or in equity, of myself, as receiver aforesaid, to the following, to-wit:

First: A mortgage made by Chas. D. Woodson to Jacob G. Chamberlain, receiver, on 9th day of November, 1889, recorded in the probate court of Colbert county, Ala., on 13th day of November, 1889, in vol. 3, record of mortgages, pages 262–3–4, which mortgage was given to secure a note made by Chas. D. Woodson to said Chamberlain, receiver, upon the following real estate lying in Colbert county, Ala.: Lots one and two in block two of the city of Sheffield, according to a map and survey made by Chas. Boeckh, C. E., and filed for record in the office of the judge of probate for Colbert county.

All the undivided one-half interest in and to the south half of the east half of the northwest quarter of sec. 3, township 4, range 11 west, containing twenty acres more or less.

In witness whereof, I have hereunto set my hand this the day of Sept. 1st, 1890.

JACOB G. CHAMBERLAIN.

State of Alabama, }
Colbert County. }

I, R. H. Wilhoyte, a notary public in and for said State and county, hereby certify that J. G. Chamberlain, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing conveyance, he executed the same voluntarily on the day the same bears date.

Given under my had this the 1st day of September, 1890.

[Seal] R. H. WILHOYTE, Notary Public.

(Copy.) SHEFFIELD, Ala., December 11th, 1889.

CHAS. D. WOODSON,
Sheffield, Ala.

Dear Sir:

As I understand the transaction about the $25,000 receiver's certificates, disposed of by you in New York, in October last, the facts substantially these:

You received the certificates from me to be disposed of for

a commission not to exceed 6 per cent. but before you had disposed of them you received my telegram from Atlanta of 13th October instructing you not to dispose of them, but to return the certificates with other papers to me at Sheffield, and you replied by telegram that you would do so. After receiving that telegram you disposed of the certificates, as I understand, at 75c on the dollar.

Now, I am informed by Judge Tompkins, who has been examining the matter from a legal point of view, that receiver's certificates are not negotiable securities, like bonds or notes, and that the purchaser is bound in law to know what the order of the court is, authorizing their issue. This order of court authorized certificates to be issued, bearing not more than seven per cent interest, and to be sold for a reasonable commission. So, whether or not the party through whom you negotiated the certificates knew that you had purchased them outright from me, the sale, under the circumstances, is null and void, and the certificates cannot be made a lien against the property of the company. And as you have not disclosed to me to whom or through whom the certificates were sold, I give this notice to you, as being all I can do, and say that I will apply to the court and ask that the certificates be declared invalid and illegal. As receiver, I have no legal right to pursue any other course, as no part of the money for which they were sold has ever been turned over to me by you or any one else.

Yours very truly,

J. G. CHAMBERLAIN, Receiver.

This letter was never offered in evidence by either side, and has been attached by Jacob G. Chamberlain, or some other peason, since the examination of said witness and without any proper authority for so doing, and it is objected to by intervenor on this ground.

JNO. B. KNOX,
Sol. for Respondent.

DEPOSITION OF J. B. CARRINGTON.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company.

Intervention of Anniston Loan and Trust Company.

Deposition of John B. Carrington, a witness examined by agreement:

My name is John B. Carrington, I reside at Jasper, Alabama, I am the general manager of the Townley Coal and Coke Company. On the 24th day of October, 1889, I was superintendent of the coal and coke department of the Sheffield and Birmingham Coal, Iron and Railway Company. I am the J. B. Carrington who witnessed the original agreement, which is now shown me, executed on the 24th day of October, 1889, between J. G. Chamberlain, receiver, and Charles D. Woodson, and Charles D. Woodson as president of the First National Bank of Sheffield, Alabama. I herewith attach a copy of said agreement to this, my deposition, and place thereon my initials "J. B. C." as a mark of identification.

My recollection is that this paper was executed in Sheffield, Alabama, and that Mr. Woodson, Judge Tompkins and Mr. Chamberlain were present at the time of its execution. Afterwards I witnessed a deed or a mortgage, in the Caldwell Hotel at Birmingham, executed by Charles D. Woodson, I think, in some way guaranteeing the delivery of other deeds to Mr. Chamberlain to secure certificates referred to in the agreement. It was something of this kind, I did not read it. I heard the parties talking about it. It was made in some way to secure the proceeds of the receiver's certificates and notes, but I cannot remember how. The property covered by this deed or mortgage was a block situated on 8th or 9th Avenue in Birmingham. There were present when the mortgage was executed in Birmingham above referred to, C. D. Woodson, H. B. Tompkins and J. G. Chamberlain. The paper was drawn by Judge Tompkins, signed by C. D. Woodson and witnessed by me.

On the 28th day of November, 1889, I presented a check drawn by J. G. Chamberlain, receiver, in my favor for ($1,000) one thousand dollars, to the First National Bank of Sheffield. The check was first presented to Mr. Benham, the cashier, and he referred me to Mr. Woodson, the president of the bank, for payment. Mr. Woodson said, "I can't pay it to you today." I replied that I must have some of it as I have freights to pay. He said that he could not give me any of it, saying, "Carrington, old boy, I am gone up."

The bank suspended the next day. This was the first time that he had refused to honor a check presented by me. Before this he had paid checks to me on presentation. I was freqently presenting checks to him.

(Signed) J. B. CARRINGTON.

Sworn to and subscribed before me this 14th day of September, A. D. 1891.

"J. B. C."

SHEFFIELD, ALA., October 24th, 1889.

Having received of J. G. Chamberlain, receiver, two (2) acceptances of Chamberlain, Wheeler & Company, one (1) for fifty-one hundred and twenty dollars ($5,120.00), dated September 26th, 1889, ninety days (90), and one for forty-eight hundred dollars ($4,800), dated September 27th, 1889, ninety (90) days; also having received from said J. G. Chamberlain, receiver, twenty-five thousand dollars ($25,000) of receiver's certificates of the Sheffield and Birmingham Coal, Iron and Railway Company, being five in number and numbered as follows: Eight, nine, ten, eleven and twelve (8, 9, 10, 11 and 12), and dated October tenth (10th), 1889, payable in thirty-six (36) months at the National Park Bank of New York.

And, whereas the proceeds of the above mentioned acceptances and receiver's certificates were used by the First National Bank of Sheffield, Alabama, without the consent of the said J. G. Chamberlain, receiver, I hereby agree for myself, personally, and for the bank, to secure said J. G. Chamberlain, receiver, by good and sufficient real estate security or by collaterals that will be ample, under any circumstances, to secure the above amounts, said security to be given within ten

days from date or before if possible to have papers executed

CHAS. D. WOODSON.

CHAS. D. WOODSON, Prest.
First Natl. Bk. of Sheffield, Ala.

Witness :
J. B. CARRINGTON.

I hereby certify that the foregoing is a true copy of the original.

ORIGINAL BILL OF COMPLAINT.

Central Trust Company vs. S. & B. C., I. & R'y Co.

United States of America,
Northern District of Alabama, Northern Division. }

To the judges of the circuit court of the United States for the northern district of Alabama, northern division, sitting in equity:

The Central Trust Company of New York, a corporation created by and existing under the laws of the State of New York, and having its principal office and place of transacting business in the city of New York, in said State of New York, brings this, its bill of complaint, against the Sheffield and Birmingham Coal, Iron and Railway Company, a corporation created by and existing under the laws of the State of Alabama, and having its principal office and place of transacting business at Sheffield, in Colbert county, in said State of Alabama, and Charles D. Woodson, a citizen of and resident of the State of Alabama, and residing in the northern district of Alabama, and thereupon your orator complains and say:

First. Prior to the 25th day of August, 1887, the Sheffield and Birmingham Railroad Company was a corporation duly created and organized under and by virtue of the laws of the State of Alabama, having certain rights and privileges under the laws of said last mentioned State. Prior to the 28th day of February, 1887, there was a corporation duly organized and existing under the laws of the State of Tennessee, known as the Alabama and Tennessee Coal and Iron Company, which by a special act of the legislature of Alabama, passed on said 28th day of February, 1887, became and was made a corpora-

tion of said State of Alabama, the defendant, the Sheffield and Birmingham Coal, Iron and Railway Company, was formed on the 25th day of August, 1887, by the consolidation of the said formerly existing corporations known as the Alabama and Tennessee Coal and Iron Company and the Sheffield and Birmingham Railroad Company, and by virtue of said consolidation became and was a corporation of said State of Alabama, and vested with all and singular and rights, powers, privileges and franchises of such formerly existing corporations, subject, however, to all the debts, liens and liabilities incurred, created or suffered by such formerly existing corporations.

Second. In the exercise of the powers in that behalf possessed by it under the laws of the State of Alabama, and in order to obtain money for constructing certain iron furnaces, and the railroad tracks, houses, buildings and appurtenances thereunto belonging, and of otherwise carrying out the objects of its incorporation, the said defendant, the Sheffield and Birmingham Coal, Iron and Railway Company, in accordance with resolutions duly adopted by the board of directors and stockholders, at meetings of said stockholders and directors duly and regularly called and held, did on or about the 2nd day of January, 1888, execute its bonds amounting in the aggregate to one million dollars, by each of which bonds it promised to pay to the bearer or registered holder thereof, on the second day of January, 1908, at Mechanics' National Bank in the city o New York, the principal sum mentioned therein (some of said bonds being for the sum of $1000, some thereof for the sum o $500, and some thereof for the sum of $100 principal), in lawful money of the United States of America, with interest thereon at the rate of six per centum per annum, semi-annually, on the first day of July and January in each year, upon the surrender of the coupons annexed to such bonds as they should severally become due. The said defendant corporation thereafter issued, negotiated and sold, or caused to be issued, negotiated and sold, for its lawful purposes, all the bonds of the said issue, with said coupons attached, and all of said bonds were, before they were issued, duly authenticated by your orator by a certificate endorsed thereon, and said bonds to the extent of $87,000 of principal are now in the

hands of a large number of persons as holders thereof, whose names are unknown to your orator.

Third. In order to secure the payment of the principal and interest of the said bonds according to their tenor and effect respectively, the said defendant corporation, in pursuance of the further provisions of the said resolutions of its board of directors and of its stockholders, did, on or about the 2nd day of January, 1888, make, execute and deliver to your orator (which then was and now is a corporation created by and existing under the laws of the State of New York), and sealed with its corporate seal, a certain deed or indenture of trust and mortgage, known as its first mortgage, and thereby granted, bargained, sold, conveyed, assigned, aliened, transferred and set over unto your orator and to its successors and assigns forever, all and singular, the property mentioned and described in said deed of trust and mortgage, with its appurtenances and improvements, rights, interest, immunities and privileges, for a particular description of said mortgaged property and premises, as well as the conditions, provisions, recitals, stipulations and agreements therein contained, your orator refers to a true and correct copy of said deed of trust and mortgage (omitting signatures) which is hereunto annexed, marked "Exhibit A," which your orator prays may be taken as a part of this bill as if the same were incorporated into the body of it; and your orator prays leave to produce and refer to the original of said mortgage at the hearing of this cause.

Fourth. Your orator duly accepted the trust created in and by said indenture of trust and mortgage, and manifested its acceptance by executing said instrument under its corporate seal, and thereupon the said instrument was duly recorded in the proper offices in the several counties in said State of Alabama, wherein the said mortgaged property and premises were and are situated.

Fifth. Your orator further avers that the holders of said bonds to the amount of nine hundred and eighty-seven thousand dollars of principal as aforesaid, issued and negotiated as aforesaid, and secured by said deed of trust and mortgage, and of the coupons for interest annexed to and appertaining to said bonds respectively, and who held or owned the said bonds o

coupons on the 1st day of January, 1889, were entitled to collect and receive from the said defendant corporation at the Mechanics' National Bank in the city of New York the amount of said coupons maturing on said last mentioned day, amounting in the aggregate to the sum of twenty-nine thousand six hundred dollars. Your orator is informed and believes that the said defendant corporation has never paid any interest on said bonds or any of them, and that it has not at any time had, at the Mechanics National Bank in the city of New York, any money or funds applicable to the payment of said coupons or any of them. That a large number of said coupons were duly presented for payment at the said Mechanics' National Bank on the 2nd day of January, 1889, and payment thereof demanded and refused; and that said defendant corporation has made default in the payment of the interest on said bonds which became due and payable on the 1st day of January, 1889, according to the tenor and effect of said coupons, and said default still continues and said coupons have not, nor have any or either of them nor any part thereof, been in anywise paid by said defendant corporation to the holders of said bonds or coupons, and the amount thereof still remains wholly due, owing and unpaid by said defendant corporation; and that thereby the conditions of said mortgage have became and are broken, and the said conveyance to your orator has become and is absolute.

Sixth. In the further exercise of the powers in that behalf possessed by it under the laws of the said State of Alabama, and in order to provide moneys for the completion of its plant at Sheffield, Alabama, and for working capital with which to operate its furnaces, and for the building of additional railroad tracks at Sheffield to enable it to reach its landing and wharf privileges near its furnaces on the Tennessee river; and for the opening of mines and development of the same in the coal lands owned by it; and for the building of coke ovens upon its lands, and for expenditure upon and development of its various interests and properties, so as to place the same upon a sound and paying basis; and in order to provide for the paying and discharging of its indebtedness therefor as fast as it should accrue, and to develop the scheme and purposes of its organization, and enlarge its business and usefulness as by

law it was entitled to do, the said defendant the Sheffield and Birmingham Coal, Iron and Railway Company, in accordance with resolutions duly adopted by its board of directors and stockholders, at meetings of said stockholders and directors duly and regularly called and held, did, on or about the 1st day of June, 1888, execute its bonds, amounting in the aggregate to $400,000, by each of which bonds it promised to pay to the bearer or registered holder thereof on the 1st day of June, 1908, at the Mechanics' National Bank, in the city of New York, the sum of one thousand dollars, in gold coin of the United States of America, of the then existing standard of weight and fineness, with interest thereon from the 1st day of June, 1888, at the rate of six per centum per annum, in like gold coin, in the city of New York, semi-annually on the first days of December and June in each year, on the presentation and surrender of the coupons annexed to such bonds as they should severally become due. The said corporation thereafter issued, negotiated and sold, or caused to be issued, negotiated and sold for its lawful purposes all the bonds of said last mentioned issue, amounting to the sum of four hundred thousand dollars of principal, with said coupons attached, and all of said bonds were before they were issued, duly authenticated by your orator by certificate indorsed thereon, and said bonds are now in the hands of a large number of persons as holders thereof whose names are unknown to your orator.

Seventh. In order to secure the payment of the principal and interest of the said last mentioned bonds according to their tenor and effect respectively, the said defendant corporation in pursuence of the further provisions of the said resolutions of its board of directors and of its stockholders, did on or about the 1st day of June, 1888, make, execute and deliver to your orator, and seal with its corporate seal, a certain deed or indenture of trust and mortgage bearing date June 1, 1888, and thereby granted, bargained, sold, conveyed and set over unto your orator and its successors and assigns forever, all and singular the property mentioned and described in said last mentioned deed of trust and mortgage, with its appurtenances and improvements including the same lands and other property embraced in and covered by the said mortgage to your orator of January 2nd, 1888, and also including a large

amount of other lands and property, as well as the main line and branches of the railroad of said corporation with the equipment and appurtenances thereof, in trust to secure the payment of said last mentioned issue of bonds and of the interest thereon. For a particular description of said last mentioned mortgaged property and premises, as well as the conditions, provisions, recitals, stipulations and agreements therein contained, your orator refers to a true and correct copy of said last mentioned deed of trust and mortgage (omitting signature, and also omitting for brevity the description of the property and premises embraced in and covered by the said mortgage of January 2nd, 1888, already described in full in "Exhibit A") which is hereunto annexed marked "Exhibit B", and your orator prays that the same may be taken as a part of this bill as if said exhibit were incorporated into the body of it; and your orator prays leave to produce and refer to the original of said mortgage at the hearing of this cause.

Eighth. Your orator duly accepted the trust created in and by said last mentioned indenture of trust and mortgage, and manifested its acceptance by executing said instrument under its corporate seal, and thereupon the said instrument was duly recorded in the proper offices in the several counties in the State of Alabama wherein the mortgaged property and premises were and are situated, so as to constitute and the same does constitute a lien upon the property and premises embraced and described in the said deed of trust and mortgage of January 2nd, 1888, junior and subordinate to the lien of said deed of trust and mortgage of January 2nd, 1888.

Ninth. Your orator further shows that the holders of said bonds to the amount of four hundred thousand dollars principal as aforesaid secured by said deed of trust and mortgage of June 1st, 1888, and of the coupons for interest annexed to and appertaining to said bonds respectively, and who held and owned the same on the 1st day of December, 1888, were entitled to collect and receive from the said defendant corporation at the Mechanics' National Bank in the City of New York the amount of said coupons maturing on said last mentioned day, amounting in the aggregate to the sum of twelve thousand dollars. Your orator is informed and believes that

the said defendant corporation has never paid any interest on said bonds, or any of them, and that it has not at any time had at the said Mechanics' National Bank in the City of New York any moneys or funds applicable to the payment of said coupons, or any of them. That a large number of said coupons were duly presented for payment at said Mechanics' National Bank on the first day of December, 1888, and payment thereof demanded and refused; and that the said defendent corporation has made default in the payment of the interest of said last mentioned bonds, which became due and payable on said first day of December, 1888, according to the tenor and effect of said coupons, and said default still continues, and said coupons have not, nor have either of them or any part of them, been in any wise paid by said defendant corporation to the holders of said bonds or coupons, and the amount thereof still remains wholly due, owing and unpaid by said defendant corporation, and that thereby the conditions of said mortgage have become and are broken and the said conveyance to your orator has become and is absolute. The defendant, Charles D. Woodson, who is a citizen and resident of the State of Alabama, and resident of the northern district of Alabama, is, as your orator is informed and believes, the owner and holder of the bonds of said last mentioned issue, and is made a party defendant herein in order that he may represent and protect, as far as may be necessary, the rights and interests of the owners and holders of the bonds of said issue, in respect to that portion of the mortgaged premises which is embraced in and covered by the said mortgage of January 2nd, 1888.

Tenth. Your orator further shows upon information and belief, that since the execution and delivery and recording of the said mortgage of June 1st, 1888, the defendant corporation has acquired the whole of the property of the Sheffield and Bessemer Mining Company mentioned in said deed of trust and mortgage, and that the said last mentioned mortgage constitutes a first lien upon the property so acquired.

Eleventh. Your orator further avers that since the execution, delivery and recording of the said mortgage of January 2nd, 1888, the defendant corporation has, in accordance with

the provisions contained in said deed of trust and mortgage, sold and conveyed certain portions of said mortgaged premises, which are described and set forth in a schedule hereunto annexed as a part of this bill and marked "Exhibit C". That in accordance with the said provisions of said deed of trust and mortgage your orator has executed and delivered releases of the property so sold. That in consideration of such sales the defendant corporation has received divers sums of money amounting to the sum of ten thousand, six hundred and seventy-five dollars, and has also acquired certain other lands and property in substitution for the lands so conveyed, a description of which lands so received in substitution is annexed to this bill as a part thereof, marked "Exhibit D"; and that as your orator is advised and believes, the said lands and property so acquired have become and are subject to the lien of said deeds of trust and mortgage; that the moneys received as aforesaid have been paid over by said defendant corporation to your orator, as trustee under said mortgage of January 2d, 1888, and that your orator has, in the manner provided in said mortgage, applied the same to the purchase of thirteen bonds of the issue secured by said mortgage of January 2d, 1888, which said thirteen bonds have been cancelled, thereby reducing the amount outstanding on said mortgage from one million dollars to nine hundred and eighty-seven thousand dollars.

Twelfth. Your orator further shows upon information and belief, that the said defendant corporation has made default in the payment of the interest on other bonds or obligations, viz: in the payment of interest upon bonds of the Sheffield and Birmingham Railroad Company secured by mortgage to the Knickerbocker Trust Company of New York, trustee, covering the line of railway of defendant corporation, which said interest the said defendant corporation, by the said consolidation became, and is, liable to pay; and in the payment of the interest on bonds of said Sheffield and Birmingham Railroad Company secured by mortgage to the Mercantile Trust Company of New York, trustee, also covering said line of railway, which said interest the said defendant corporation by the said consolidation became, and is, liable to pay.

Your orator has no knowledge and is not informed, and cannot state as to its belief, or otherwise, as to the amount of said bonds outstanding or in default, or as to the amount of interest due and unpaid thereon; but is informed and believes, that the trustees under said several deeds of trust and mortgages are about to institute proceedings for the foreclosure of the equity of redemption of the defendant corporation in the premises and property covered by said mortgages respectively, and for the sale of the said premises and property, and for the appointment of a receiver thereof pending such proceedings.

Your orator further shows upon information and belief, that the equipment, locomotive engines, passenger and baggage cars, and freight cars of every kind and description, are totally inadequate for the proper and profitatable operation of said line of railway, and that the defendant, the Sheffield and Birmingham Coal, Iron and Railway Company, is not in a financial condition to increase such equipment, and is making no arrangement to add to the rolling stock; that without a speedy increase of such rolling stock equipment, said line of railroad will not be in a conditon to transport the passenger and freight traffic that are now offering over said road, nor will it be in a condition to ever pay off the interest on its bonded indebtedness without such increase in its rolling stock equipment, and consequently the security for the bondholders is growing less each day.

Thirteenth. Your orator further shows upon information and belief, that there are large sums of money now due and owing to employees of the defendant corporation, and that still larger sums will soon become due and payable to such employees, and that under and by virtue of the provisions of the statute of the State of Alabama, in which State said line of railway is wholly situated, said employees (except the officers of the railway company) have a lien for all debts due them for work and labor done and performed for such company, which extends to and covers all property, rights, effects and credits of every description belonging to such company, and situate in said State of Alabama. And your orator fears that unless a receiver of said property be appointed, said employees will institute actions or proceedings by attachment to

enforce their several and respective liens against the property of said defendant corporation, and that such proceedings will result in a multiplicity of suits, and cause great loss to the owners and holders of the bonds of said defendant corporation.

Your orator further shows upon information and belief, that the property of the said defendant corporation is not sufficient to pay its mortgage debts, and that the property embraced in and covered by the said several mortgages is not an adequate security for the bonds issued under said several mortgages; that in addition to its bonded indebtedness the said defendant corporation has a large floating debt, and is also indebted for taxes, State and county, and also to divers persons in large sums upon car-trust obligations and for rights of way; that your orator is apprehensive that some of the creditors of said defendant corporation will shortly commence legal or equitable proceedings against the property of said defendant corporation for the enforcement of their claims; and that a multiplicity of suits, judgments and liens will obstruct the use and operation of the property of said defendant corporation, and cause great loss to the holders of the bonds and other obligations of said defendant corporation and a sacrifice of its large and valuable property. Your orator further shows upon information and belief, that the said defendant corporation is insolvent and unable to pay its debts and liabilities in full, and that it is necessary for the protection of the interests of all the parties concerned, and especially of the several holders of the bonds and coupons secured by said mortgages of January 2nd, 1888, and June 1st, 1888, that a receiver of the said mortgaged properties should be appointed by the court forthwith.

Fourteenth. Your orator further shows upon information and belief, that under the terms and conditions of the said Articles of Consolidation of 25th August, 1887, the amount of capital stock set apart for the said Railway Department of said Sheffield and Birmingham Coal, Iron and Railway Company was limited to $2,700,000, and to the sum of $30,000 per mile of said railroad, and that the stock theretofore issued on said Sheffield and Birmingham Railroad was delivered up to the said consolidated company for cancellation, and that no stock

certificates represent the said $2,700,000 or any part thereof have been issued or delivered to any person or corporation entitled to the same, but that all such stock certificates are still in the possession, custody and control of the defendant, the Sheffield and Birmingham Coal, Iron and Railway Company, and in event of the sale of the line of railway of said defendant corporation the said stock to the amount of $2,700,000 and the certificates for the same should be, by decree of this honorable court, cancelled and declared to be null and void.

Fifteenth. Your orator further shows, that no proceedings at law or in equity have been had by suit or action commenced by or on behalf of your orator or any holders of said bonds and coupons, for any interest unpaid or accrued thereon, or the enforcement of the provisions of said mortgages.

Sixteenth. Your orator further avers on information and belief, that the said mortgaged property and premises covered by said several and respective mortgages aforesaid are so circumstanced that a sale thereof in parcels can not be had without great loss and injury to the holders of the bonds secured by said several and respective mortgages, but that in order to realize the value of said properties the said lands and other property covered by said mortgage of January 2nd, 1888, should be sold in one parcel, and the other properties in a separate parcel without further subdivision.

Wherefore, And for as much as your orator is remediless in the premises as any by the strict rules of the common law, and can have adequate relief only in a court of equity where matters of this nature are properly cognizable and reviewable; to the end, therefore, that the said defendants, the Sheffield and Birmingham Coal, Iron and Railway Company and Charles D. Woodson may answer, but not under oath (such oath being hereby waived), according to the practice of this court, all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were here expressed and they thereunto particularly interrogated; that the amount due and owing and unpaid for principal and interest, or either, upon the bonds secured by said mortgage to your orator of January 2d, 1888, and upon the bonds secured by said mortgage to your orator of June 1st, 1888, may be ascertained, adjudged

and determined, and that payment thereof, or of so much thereof as shall then be due by and from said defendant corporation may be dècreed by this court; that the amount and nature and extent of any and all liens upon the premises covered by said respective mortgages, or any part thereof, prior to the lien of said mortgages respectively, mav be also asc rtained and determined; that all and singular the line of railroad of the defendant corporation, with its appurtenances and franchises and rolling stock and equipment, and all the other l nds, properties, premises, rights and things mentioned in and covered by or embraced in the said several mortgages, may be adjudged and decreed to be sold at a judicial sale thereof, according to the course and practice in case of mortgage foreclosures of such character, that the said lands and property covered by said mortgage of January 2d, 1888, may be sold in one parcel, and that the said lands and property and line of railway covered by said mortgage of June 1, 1888, and not included in said mortgage of January 2, 1888, may be sold in another separate parcel; that by such several sales and the several conveyances to be executed thereupon, the defendant, the Sheffield and Birmingham Coal, Iron and Railway Compano, and all persons claiming or to claim under it subsequent to the recording of said mortgages respectively, may, all and each of them, be absolutely and forever barred and foreclosed of and from all rights, claims, title, lien, possession or equity of redemption in or to or in respect of the premises, properties, rights and franchises so sold and conveyed, and that actual possession of said premises, properties, rights and franchises so sold and conveyed may be decreed to be delivered to the several purchasers and grantees thereof, and that such sales may respectively be declared to be in execution and enforcement of the mortgage liens created by said several and respective mortgages or deed of trust to your orator; that from and out of the proceeds of such foreclosure sales respectively, your orator may be paid its costs and expenses in this action, and such sums as this court shall adjudge to be properly due and payable to it in respect of its disbursements and its reasonable compensation, as trustee under said several mortgages or deeds of trust; that the residue of the proceeds of the sale of the said property and premises covered by and

embraced in said mortgage of June 1, 1888, and not included in said mortgage of January 2d, 1888, or so much thereof as may be requisite for the purpose, may be paid over and applied under the direction and in pursuance of the order and decree of this court to or towards the payment of the amount adjudged to be due or owing or unpaid for principal and interest on all the said bonds and unpaid coupons accompanying the same, issued under and secured by the said mortgage or deed of trust of June 1, 1888; that any residue of the proceeds of the sale of said property and premises covered by and embraced in said morgtage of January 2, 1888, or so much thereof as may be requisite for the purpose, be paid over and applied under the direction and in pursuance of the order and decree of this court to or towards the payment of the amount adjudged to be due or owing or unpaid for principal and interest on the said bonds and unpaid coupons accompanying the same, and secured by the said mortgage or deed of trust of January 2, 1888, and if there be any residue of the proceeds of said last mentioned property and premises, that the same, or so much thereof as may be requisite, may be paid over and applied towards the payment of any amount remaining due or owing or unpaid for principal and interest on the said bonds and coupons accompanying the same, secured by said mortgage of June 1, 1888; that the capital stock properly applicable and belonging to the said line of railroad to the extent of $2,700,000 may be decreed to be cancelled and deducted from the whole amount of the stock of the said defendant corporation; that if there be any surplus of said proceeds of sale after applying the same as above set forth, the same may be applied as the court shall further direct and decree; that pending this suit, some suitable person or persons may be appointed by this court receiver or receivers, to take possession of all and singular the said mortgaged property, with the usual powers of receivers in such cases, with power to manage and opeaate the said railroad and other property therein described, and to receive all its earnings and income during the pendency of this suit, and with such powers as to this court shall seem right and proper, and that your orator may have such other or further order, relief or decree in the premises as this court shall deem agreeable and proper in equity.

and Railway Company, at Sheffield, on the Tennessee river, down to the landing on said river, it is a distance of about 5,800 feet, and that a line has been run from said furnaces to the river, by competent engineers, shewing that the railroad can be extended to the river at said landing, with a grade of about ninety feet to the mile. And petitioner avers and shows to the court that it is of manifest and paramount importance that such connection from the furnaces to the river should be made at as early a day as practicable, as thereby it will enable said defendant company to avail itself of the river transportation, not only in the shipment of the output of its furnaces at Sheffield, but also in forwarding and receiving various kinds and large quantities of freight by river from St. Louis and other cities on the Tennessee, Ohio and Mississippi rivers.

Third. Your petitioner further shows that owing to the failure on the part of said Sheffield and Birmingham Coal, Iron and Railway Company to procure ore in sufficient quantities, that two of the three iron blast furnaces owned by said company at Sheffield are now idle, although they are completed and can be very soon put in a condition to go into blast, with some change in the boiler power, and other defective construction about said furnaces. And your petitioner avers and shows to the court that by a judicious expenditure of money the furnaces could soon be put in a condition to go into blast, and that an adequate supply of ore could be secured, either by contracts with persons owning mines, or by the purchase of ore lands and their development by petitioner as aforesaid. And petitioner avers that the sum of not less than one hundred and fifty thousand dollars ($150,000) will be required to put the three said furnaces in blast, by having their defective construction remedied, and by procuring an adequate amount of iron ore.

Fourth. Your petitioner further avers and shows to the court that by the aforesaid additions and improvements to the furnaces of the said defendant corporation, the property will then be in a condition to realize a great deal of money, and to pay fixed charges upon the amount of bonded indebtedness that is now upon it. And petitioner prays the court at once

to take such steps and issue such orders in the premises as to cause receiver's certificates to be issued upon said three furnaces and the ground upon which they are situated, and the wharf privileges at Sheffield, and the other property of the defendant, 70,000 acres of coal lands, which are set forth and shown in the mortgages or deeds of trust, of the 2nd day of January, 1888, and 1 June 1888, to the Central Trust Company of New York, which said receiver's certificates shall not exceed in the amount of one hundred and fifty thousand dollars, and shall be used exclusively for the purpose of procuring money to construct a line of railway from the furnace site to the wharf; and to pay off and discharge the lien indebtedness hereinbefore set forth and shown to exist against said property; and to put one or both of the two additional furnaces at Sheffield in blast, by having them put in thorough repair and condition; and to procure iron ore with which to operate said furnaces, as hereinbefore set forth in this petition.

And your petitioner prays that by reason of the urgency in the matter that the court will at once either issue the necessary orders, as hereinbefore prayed for, or will refer this petition to ———— master in chancery in the aforesaid suits, to be examined into and reported upon at as early a day as possible.

And your petitioner will ever pray, etc.

JACOB G. CHAMBERLAIN, Receiver, etc.

The State of Alabama, }
County of Colbert. }

Before me, the undersigned, personally came Jacob G. Chamberlain, who on oath says that the matters and things set forth and shown in the foregoing petition are true, when stated of his own knowledge, and that he believes them to be true when stated on information and belief.

Sworn to and subscribed before me this 15th day of June, 1889.

(Seal) J. V. ALLEN, Notary Public,
Colbert County, Ala.

A majority of the holders of the bonds secured by the mortgages to the Central Trust Company (i. e., a majority in

amount) having requested the issue of receiver's certificates as prayed for above, we have no objection to an order granting the prayer of the petition, such order to provide that so much of said certificates as may be required (not exceeding, however, $50,000) shall be applied to put in blast and operate a second furnace in addition to the furnace now in blast.

N. Y., July 2, '89. BUTLER, STILLMAN & HUBBARD,
Solicitors for Central Trust Company.

HENRY B. TOMPKINS,
Of Counsel.

Endorsed: Filed July 31st, A. D. 1889.
A. W. MCCULLOUGH, Clerk U. S. Circuit Court.
Nor. Dist. Ala.

ORDER AUTHORIZING ISSUANCE OF RECEIVER'S CERTIFICATES.

United States of America.

In equity in the United States circuit court for the northern district and division of Alabama. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

Order of court authorizing the receiver to issue certificates to the amount of $150,000 for the purpose of paying off taxes and other lien debts; and for the purpose of putting the property in a condition to start another furnace, and for other purposes set forth in the petition for receiver's certificates.

The court having seen and heard the petition of Jacob G. Chamberlain, the receiver in the above entitled cause, and fully considered the same, and it appearing that a large majority of both classes of bondholders have consented to and requested the issuing of receiver's certificates; and it appearing that the Central Trust Company of New York, the complainant in the above entitled cause, interposes no objection to the issuing of such certificates; and it further appearing that there are not sufficient funds in the hands of said

receiver to meet the above and other essential charges for the preservation of the property, and the economical management of the same and the development of said property for the benefit and advantage of the bondholders:

It is ordered, that said receiver be, and he is hereby authorized and empowered to issue receiver's certificates or debentures in a sum not exceeding one hundred and fifty thousand ($150,000) dollars, bearing a rate of interest not exceeding 7 per cent. per annum, said certificates to fall due from time to time in thirty-six months after date thereof; and that said receiver be authorized and empowered to sell said certificates at not less than par, less a reasonable amount to be paid for the negotiation of the same, and the proceeds thereof to be applied to the purposes hereinbefore mentioned.

And it is further ordered that said certificates and obligations, when issued, shall become, and they are hereby declared to be, a lien on the furnace site and the three furnaces erected thereon, and the wharf property and all other fixtures, railway tracks and appurtenances therewith connected, situated at Sheffield, in the State of Alabama; and also a lien upon the seventy thousand acres of coal lands, more or less, in Walker, Winston, Marion and Fayette counties, as set forth in the deed of trust of 2d January, 1888; and that said certificates shall also be a lien upon the coke ovens situated at Jasper, in Walker county, and the interest in the Townly coal mine in Walker county, and the coal lands and coal mines in Jefferson county, Alabama, together with all the railway tracks, appliances and appurtenances thereunto belonging, and all of which are set forth and described in the deed of trust executed on 1st June, 1888.

It is further ordered that said certificates or debentures be substantially in the following form, to-wit:

Office of Receiver of the Sheffield and Birmingham Coal, Iron and Railway Company. Jacob G. Chamberlain, Receiver.

SHEFFIELD, ALA., day of 1889.

months after date, for value received, I, Jacob G. Chamberlain, receiver of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, do, under and by virtue of the powers in me vested by order of the circuit

court of the United States for the northern district and division of Alabama, at Huntsville, made on the 11th day of July, 1889, in a certain cause, wherein the Central Trust Company New York is complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and another are defendants, hereby promise to pay at the in the city of New York, to the bearer hereof dollars, with interest from date until paid at the rate of per cent. per annum. Interest payable semi-annually.

This obligation is one of a series amounting to the aggregate of one hundred and fifty thousand dollars, authorized by said court to be made by me as receiver, and is, together with others of the same series, made and declared to be a lien upon all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, as set forth and described in two mortgages or deeds of trust, the first executed on the 2nd day of January, 1888, and the second mortgage executed on the 1st day of June, 1888, (except upon the line of railroad formerly known as the Sheffield and Birmingham Railroad, and upon which the last described mortgage was formerly, but is no longer, a lien), together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, of every nature and description, wheresoever situated; and also a lien upon whatever residue of the earnings, income and profits of the said property that there may be, which have accrued since the appointment of the receiver, and after deducting operating expenses and the costs of needed repairs and expenses of the receivership. And such lien shall be prior to all other liens of any kind whatever against said properties.

It is further ordered that so much of said certificates as may be required (not exceeding $50,000) shall be used to put in blast and operate a second furnace in addition to the furnace now in blast by the receiver.

July 11th, 1889. DON A. PARDEE,
Circuit Judge.

Endorsed: Filed in U. S. Clerk's office this 31st day of July, 1889. A. W. MCCULLOUGH, Clerk.

No. 8. $5,000.00

Office of the Receiver of the
Sheffield and Birmingham Coal, Iron and Railway Co.
Jacob G. Chamberlin, Receiver.

Sheffield, Ala., 10th day of October, 1889.

Thirty-six months after date, for value received, I, Jacob G. Chamberlin, receiver of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, do, under and by virtue of the powers in me vested by order of the Circuit Court of the United States, for the northern district and division of Alabama, at Huntsville, made on the 11th day of July, 1889, in a certain cause, wherein the Central Trust Company of New York is complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and another are defendants, hereby promise to pay at the National Park Bank in the City of New York, to the bearer hereof, five thousand dollars, with interest from date until paid at the rate of six per cent per annum, interest payable semi-annually.

This obligation is one of a series amounting to the aggregate of one hundred and fifty thousand dollars, authorized by said court to be made by me as receiver, and is, together with others of the same series, made and declared to be a lien on all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, as set forth and described in two mortgages, or deeds of trust, the first executed on the 2nd day of January, 1888, and the second mortgage executed on the 1st day of June, 1888, (except upon the line of railroad, formerly known as the Sheffield and Birmingham Railroad, and upon which the last described mortgage was formerly, but is now no longer, a lien) together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company of every nature and description, wheresoever situated; and also a lien upon whatsoever residue of the earnings, incomes and profits of the said property that there may be, which have accrued since the appointment of the said receiver, and after deducting operating expenses and the cost of needed repairs and expenses of the receivership. And

such lien shall be prior to all other liens of any kind whatever against said properties.

J. G. CHAMBERLIN,
Receiver.

Signed before me.

L. W. DIMINICK,
Notary Public, Colbert Co., Ala.

No. 9. $5.000.00

Office of the Receiver of the
Sheffield and Birmingham Coal, Iron and Railway Co.
Jacob G. Chamberlin, Receiver.

Sheffield, Ala., 10th day of October, 1889.

Thirty-six months after date, for value received, I, Jacob G. Chamberlin, receiver of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, do, under and by virtue of the powers in me vested by order of the Circuit Court of the United States, for the northern district and division of Alabama, at Huntsville, made on the 11th day of July, 1889, in a certain cause, wherein the Central Trust Company of New York is complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and another are defendants, hereby promise to pay at the National Park Bank in the City of New York, to the bearer hereof, five thousand dollars, with interest from date until paid at the rate of six per cent per annum, interest payable semi-annually.

This obligation is one of a series amounting to the aggregate of one hundred and fifty thousand dollars, authorized by said court to be made by me as receiver, and is, together with others of the same series, made and declared to be a lien on all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, as set forth and described in two mortgages, or deeds of trust, the first executed on the 2nd day of January, 1888, and the second mortgage executed on the 1st day of June, 1888, (except upon the line of railroad, formerly known as the Sheffield and Birmingham Railroad, and upon which the last described mortgage was formerly, but is now no longer, a lien) together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and

Railway Company of every nature and description, wheresoever situated; and also a lien upon whatsoever residue of the earnings, incomes and profits of the said property that there may be, which have accrued since the appointment of the said receiver, and after deducting operating expenses and the cost of needed repairs and expenses of the receivership. And such lien shall be prior to all other liens of any kind whatever against said properties.

J. G. CHAMBERLIN,
Receiver.

Signed before me. L. W. DIMMICK,
Notary Public, Colbert Co., Ala.

No. 10. $5,000.00

Office of the Receiver of the
Sheffield and Birmingham Coal, Iron and Railway Co.
Jacob G. Chamberlin, Receiver.

Sheffield, Ala., 10th day of October, 1889.

Thirty-six months after date, for value received, I, Jacob G. Chamberlin, receiver of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, do, under and by virtue of the powers in me vested by order of the Circuit Court of the United States, for the northern district and division of Alabama, at Huntsville, made on the 11th day of July, 1889, in a certain cause, wherein the Central Trust Company of New York is complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and another are defendants, hereby promise to pay at the National Park Bank in the City of New York, to the bearer hereof, five thousand dollars, with interest from date until paid at the rate of six per cent per annum, interest payable semi-annually.

This obligation is one of a series amounting to the aggregate of one hundred and fifty thousand dollars, authorized by said court to be made by me as receiver, and is, together with others of the same series, made and declared to be a lien on all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, as set forth and described in two mortgages, or deeds of trust, the first executed on the 2nd day of January, 1888,

and the second mortgage executed on the 1st day of June, 1888, (except upon the line of railroad, formerly known as the Sheffield and Birmingham Railroad, and upon which the last described mortgage was formerly, but is now no longer, a lien) together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company of every nature and description, wheresoever situated; and also a lien upon whatsoever residue of the earnings, incomes and profits of the said property that there may be, which have accrued since the appointment of the said receiver, and after deducting operating expenses and the cost of needed repairs and expenses of the receivership. And such lien shall be prior to all other liens of any kind whatever against said properties.

J. G. CHAMBERLIN,
Receiver.

Signed before me.

L. W. DIMINICK,
Notary Public, Colbert Co., Ala.

No. 11. $5.000.00

Office of the Receiver of the
Sheffield and Birmingham Coal, Iron and Railway Co.
Jacob G. Chamberlin, Receiver.

Sheffield, Ala., 10th day of October, 1889.

Thirty-six months after date, for value received, I, Jacob G. Chamberlin, receiver of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, do, under and by virtue of the powers in me vested by order of the Circuit Court of the United States, for the northern district and division of Alabama, at Huntsville, made on the 11th day of July, 1889, in a certain cause, wherein the Central Trust Company of New York is complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and another are defendants, hereby promise to pay at the National Park Bank in the City of New York, to the bearer hereof, five thousand dollars, with interest from date until paid at the rate of six per cent per annum, interest payable semi-annually.

This obligation is one of a series amounting to the aggregate of one hundred and fifty thousand dollars, authorized by

said court to be made by me as receiver, and is, together with others of the same series, made and declared to be a lien on all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, as set forth and described in two mortgages, or deeds of trust, the first executed on the 2nd day of January, 1888, and the second mortgage executed on the 1st day of June, 1888, (except upon the line of railroad, formerly known as the Sheffield and Birmingham Railroad, and upon which the last described mortgage was formerly, but is now no longer, a lien) together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company of every nature and description, wheresoever situated; and also a lien upon whatsoever residue of the earnings, incomes and profits of the said property that there may be, which have accrued since the appointment of the said receiver, and after deducting operating expenses and the cost of needed repairs and expenses of the receivership. And such lien shall be prior to all other liens of any kind whatever, against said properties.

J. G. CHAMBERLIN,
Receiver.

Signed before me.

L. W. DIMINICK,
Notary Public, Colbert Co., Ala.

No. 12. $5,000.00

Office of the Receiver of the
Sheffield and Birmingham Coal, Iron and Railway Co.
Jacob G. Chamberlain, Receiver.

Sheffield, Ala., 10th day of October, 1889.

Thirty-six months after date, for value received, I, Jacob G. Chamberlin, receiver of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, do, under and by virtue of the powers in me vested by order of the circuit court of the United States for the northern district and division of Alabama, at Huntsville, made on the 11th day of July, 1889, in a certain cause, wherein the Central Trust Company New York is complainant, and the Sheffield and Birmingham Coal, Iron and Railway Company and another are defendants, hereby promise to pay at the National Park Bank in the city

of New York, to the bearer hereof, five thousand dollars, with interest from date until paid at the rate of six per cent. per annum, interest payable semi-annually.

This obligation is one of a series amounting to the aggregate of one hundred and fifty thousand dollars, authorized by said court to be made by me as receiver, and is, together with others of the same series, made and declared to be a lien on all the property, rights, appurtenances and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, as set forth and described in two mortgages or deeds of trust, the first executed on the 2nd day of January, 1888, and the second mortgage executed on the 1st day of June, 1888, (except upon the line of railroad formerly known as the Sheffield and Birmingham Railroad, and upon which the last described mortgage was formerly, but is now no longer, a lien), together with all other properties, rights and franchises of the said Sheffield and Birmingham Coal, Iron and Railway Company, of every nature and description, wheresoever situated; and also a lien upon whatsoever residue of the earnings, income and profits of the said property that there may be, which have accrued since the appointment of the receiver, and after deducting operating expenses and the costs of needed repairs and expenses of the receivership. And such lien shall be prior to all other liens of any kind whatever against said properties.

J. G. CHAMBERLIN,
Receiver.

Signed before me.

L. W. DIMINICK,
Notary Public, Colbert Co., Ala

ORDER DIRECTING RECEIVER TO PAY CERTAIN SUMS.

In the United States Circuit Court for the Northern District and Division of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another. } No. 150.

It appearing to the court that the special master to this

cause, D. D. Shelby, Esq., has reported in favor of certain claims preferred by petition and intervention in the above stated cause as liens prior in right to the bonds issued under the mortgages sought to be foreclosed herein, which said findings of the master have been approved and ordered paid by decrees of this court, as follows:

1. First National Bank of Sheffield, Ala., $14,981.89 prin.; int. from 20th Sept., 1889, and $1,498.18 for attorney's fees due J. M. White.

2. Phillips & Wiggs Machinery Co., $9,175.00 prin.; int. from 15th Feb'y, 1889.

3. Webster, Camp & Lane Machinery Co., $2,051.47 prin.; int. from 1st March, 1889.

4. Henry B. Tompkins, $2,347.50 prin.; int. from 18th Oct., 1889.

5. Kansas City, Memphis & Birmingham R. R. Co., the money valude of certain steel rails, amounting to $4,789.24 prin.; int. from 12th January, 1889.

6. Sycamore Powder Company, $1,089.09 prin.; int. from 1st January, 1889.

7. Brickell & Harris, attorneys, $2,000.

8. Lawrence Cooper, attorney, $2,000.

It further appearing that said receiver will have funds in his hands arising from the sale of receiver's certificates other than funds arising from the operation of the property, it is considered, ordered and adjudged that the foregoing and specified amounts may be paid by said receiver out of the proceeds of such receiver's certificates.

It further appearing to the court that after the said receiver took charge of the properties of the said defendant company he, under the advice of counsel, paid off and discharged certain debts then due by said defendant, some of which were liens, and others due for labor, ore, coke, freight bills and necessary material furnished to said company, and all accrued within three months before the appointment of the receiver; which debts so paid aggregate the sum of thirty-eight thousand eight hundred and thirty-eight and 16-100 dollars ($38,838.16) all of which is fully set forth in a schedule filed with this order marked "A," and filed of this date. It is considered and

ordered that the payment of the aforesaid $38,838.16 be ratified and confirmed.

And it further appearing that the payment of said above recounted items there has been or will be appropriated and expended whatever remained in the hands of the said J. G. Chamberlain, as general superintendent at the date of his appointment as receiver; it is ordered and adjudged that the clause in the order appointing said receiver on 9th January, 1889, wherein there was excepted from that order "money and bills receivable, etc.," be no longer of any force or virtue.

In open court Dec. 3, '89.

HARRY T. TOULMIN,
U. S. Judge,

SCHEDULE A.

FURNACE DEPARTMENT.

W. S. White, Settlement Coal Agent,	306 82
Forbes, Finch & Andrews (for ore)	1,597 55
Shoal Creek Iron Co. (for ore)	3,054 06
Hull Coal & Coke Co., coke	1,670 36
Lawrence Iron Co., ore	3,463 11
T. L. Fossick & Co., limestone	1,290 37
Wilson & Cowardies, analysis of metals	35 50
Standard Oil Co. (paid to get goods from depot)	51 22
Derega Bros. " " "	56 53
Pay rolls, for labor	2,632 73
Birmingham Rolling Mill Co. (mill cinder)	432 25
S. Obermyer Fdy. & Mfg. Co. (paid to get goods from depot)	38 50
J. H. Fall & Co. " " "	14 20
O. F. Stair " " "	25 60
Eureka Brick & Lumber Co. " " "	66 41
L. & N. R. R. (freights)	281 12
M. & C. R. R. "	249 62
Birmingham Rolling Mill Co.	13 67
Ellis & Brown (rent for horses)	196 00
H. C. Timmons (labor)	15 00
Western Union Tel. Co.	8 35
First National Bank of Sheffield (interest)	623 89
" " "	5,000 00
	$21,122 86

COAL AND COKE DEPARTMENTS.

Pay roll, Dec. 1, 1889 (labor)	9,864 03
Pay roll, January 12, 1889 (labor and salaries)	5,205 06
J. B. Carrington (labor and salaries)	238 75
Shields & Copeland (building houses and trestle work)	823 57
W. H. Stribling & Co. (labor)	518 39
J. W. Manlittle & Co. (labor)	12 00
J. W. Manlittle & Co. (labor)	50 00
Southern Express Co.	3 65
K. C. M. & B. R. R. Co. (for freights)	438 88
A. J. Files (labor)	25 00
Unpaid labor acct,	3 10
F. A. Gamble (royalty on coal)	354 00
John Adams (labor)	4 50
T. L. Dallas (labor)	11 25
Henry Cully	5 62
S. J. Childere (labor)	3 60
Morse & Co. (labor)	60
S. M. Sanders (labor)	5 00
W. J. Haynes (labor)	7 50
Miner's Club (labor)	10 00
Probst Bros., (labor)	14 00
O'Rear & Gamble, (labor)	22 15
Enterprise Publishing Co.,	3 75
C. A. McFarland, (labor)	70
E. J. Jackson, (labor)	49 75
Max Smith, (labor)	1 70
Dollar & Thraft,	34 00
Coal City C. & C. Co.	4 75
	$17,715 30

SUMMARY.

Amount paid for Furnace Dept.,	$21,122 86
Amount paid for Coal and Coke Dept.,	17,715.30
Total,	$38,838 16

Endorsed: Filed Decr. 3rd, 1889.

A. W. McCULLOUGH, Clerk.

DECREE OF FORECLOSURE AND SALE.

At a stated term of the Circuit Court of the United States for the Northern District and Northern Division of Alabama, held at Huntsville, Ala., on the third day of December, 1889.

Present: The Honorable Harry T. Toulmin, U. S. Judge.

Central Trust Company of New York
vs.
Sheffield and Birmingam Coal, Iron and Railway Company and Charles D. Woodson.
No. 150. In Equity.

DECREE OF FORECLOSURE AND SALE.

And now, on this day, the above entitled cause came on to be heard, upon the original bill of complaint herein filed on the 9th day of January, 1889, and upon the answer of the defendants, filed on 28th March, 1889; and replication of complainants, filed on 29th April, 1889; and the amended and supplementary bill of complaint, filed on the 19th day of July, 1889; and the decree pro confesso upon said amended and supplementary bill, taken at the September Rules, 1889; and upon the appearance of the several defendants, the Sheffield and Birmingham Coal, Iron and Railway Company, and Charles D. Woodson, by their respective solicitors, as well as all orders and decrees heretofore entered in this cause; and thereupon, and upon consideration thereof, it is ordered, adjudged and decreed as follows, namely:

First. The court finds that the material allegations contained in said bill of complaint, in said answer, and in said amended and supplementary bill of complaint are true. That on or about the 2d day of January, 1888, the defendant, the Sheffield and Birmingham Coal, Iron and Railway Company, made, executed and delivered to the complainant, the Central Trust Company of New York, as trustee, a certain deed of trust and mortgage, bearing date on said last above mentioned day, whereby it granted, bargained, sold, transferred and conveyed to the said Central Trust Company of New York, as trustee, it successors and assigns forever, the property therein set forth and described, and which said deed of trust and to "Schedule A," hereto annexed, is hereby referred to for a full and specific statement of the property so conveyed in said

deed of trust, in trust, to secure the payment of the principal and interest of a certain series of bonds then about to be issued by said defendant company, to an amount of one million dollars, principal, and that said mortgage (known as the Furnace Mortgage) was duly recorded in the several counties in the State of Alabama respectively, wherein said mortgaged property was situated.

Second. The court further finds that on or about the 1st day of June, 1888, the defendant, the Sheffield and Birmingham Coal, Iron and Railway Co., made, executed and delivered to the complainant, the Central Trust Company of New York, as trustee, a certain other deed of trust and mortgage, bearing date on said last mentioned day, whereby it granted, bargained, sold, transferred and conveyed to said Central Trust Company of New York, as trustee, and to its assigns and succesors forever, the property therein more particularly described and set forth, and reference to which said deed of trust, and to "Schedule A" hereto annexed is hereby made for a more specific statement of said property (excepting that the whole of said property in said deed of trust and mortgage of 1st June, 1888, conveying the Sheffield and Birmingham Railroad, and every part and parcel thereof, is to be eliminated from said deed of trust and mortgage, and is to be considered as property against which this foreclosure is to have no effect whatever), in trust to secure the payment of the principal and interest of a certain series of bonds, then about to be issued by the said Sheffield and Birmingham Coal, Iron and Railway Company, to the amount of four hundred thousand dollars of principal; and that said last described mortgage (known and hereafter designated as the Four Hundred Thousand Dollar First Mortgage) was duly recorded in the several counties in the State of Alabama, wherein said mortgaged properties were situated.

And said Sheffield and Birmingham Coal, Iron and Railway Co. did, at divers times prior to the filing of the bill in this suit, issue, deliver and sell or otherwise dispose of, or cause to be issued, delivered and sold, or otherwise disposed of, nine hundred and eighty-seven (987) of said issue of one million dollars of said Furnace Bonds, with the coupons attached, all of which last mentioned bonds are now outstanding, and were,

prior to the delivery thereof, duly authenticated by certificate of complaint, as trustee, in the manner and form set forth by said mortgage. And the court finds that the remaining thirteen of said one million dollars of bonds, known as the Furnace Bonds, have been duly taken up and cancelled, and are no longer outstanding.

And the court further finds that said defendant, Sheffield and Birmingham Coal, Iron and Railway Company, did, at divers times, prior to the filing of the bill in this suit, issue, deliver and sell, or otherwise dispose of, the whole of said four hundred thousand dollars of bonds, with the coupons attached, and which are known as the Four Hundred Thousand Dollar First Mortgage Bonds, and which last mentioned bonds were, prior to the delivery thereof, duly authenticated by certificate of the trustee, in the manner and form as prescribed in and by said deed of trust and mortgage.

Third. The court further finds that said defendant, the Sheffield and Birmingham Coal, Iron and Railway Co., made default in the payment of installments of interest, which became due and payable on said nine hundred and eighty-seven bonds of one thousand dollars each, known as Furnace Bonds, in the manner and form as follows, to-wit: the sum of $8,058 falling due on the 1st day of July, 1888; and the further sum of $29,610 for semi-annual interest falling due on the 1st day of January, 1889; and the further sum of $29,610 for semi-annual interest falling due on 1st July, 1889, making an aggregate of $67,278 for interest now past due and unpaid on said 987 bonds.

And the court further finds that said defendant, Sheffield and Birmingham Coal, Iron and Railway Company, made default in the payment of the instalment of interest which became due and payable on said four hundred bonds of said four hundred thousand dollar issue, of 1st June, 1888, as follows, to-wit: For interest falling due on 1st December, 1888, $12,000; and for interest falling due on 1st June, 1889, $12,000; for interest falling due on 1st December, 1889, $12,000, making an aggregate of $36,000 for interest on said $400,000 of bonds. And that the total amount of interest that is now due and payable on said bonds known as furnace bonds, and secured by said mortgage dated January 2d, 1888,

is the sum of $67,278, with interest at six per cent. per annum on $8,058, part of said sum, from July 1st, 1888; on $29,610, also part of said sum, from 1st January, 1889; and on $29,-610, also part of said sum, from 1st July, 1889. And that the total amount of interest that is now due and payable on said bonds of the $400,000 issue, and secured by said mortgage dated 1st June, 1888, is the sum of $36,000, with interest at six per cent. per annum on $12,000, part of said sum, from December 1, 1888; and with interest at six per cent. per annum on $12,000, also part of said sum, from June 1st, 1889; and with interest at six per cent. per annum on $12,000, part of said sum, from 1st December, 1889.

Fourth. The court further finds that said defendant Sheffield and Birmingham Coal, Iron and Railway Company, has failed to keep and perform the stipulations of said bonds, and the covenants contained in the said deeds of trust and mortgage, and that said conveyance therein contained have become absolute.

Fifth. And the court further finds that in and by said two mortgages and deeds of trust, the said defendant, Sheffield and Birmingham Coal, Iron and Railway Company, agreed and waived, in event said properties conveyed therein were agreed to be sold under judgment and decree of any competent court, in a suit for the foreclosure of said mortgage, any benefit and advantage of any and all valuations, stay, exemption or redemption law or laws of the State of Alabama otherwise applicable to said sale, and also any and all right of redemption which it might otherwise be entitled to under such laws, then existing or thereafter enacted.

Sixth. The court further finds that the properties and premises set forth and described in said answer of said defendant, Sheffield and Birmingham Coal, Iron and Railway Company, in "Schedule B" annexed to said answer, and on "Schedule A" hereto annexed, being the town lots on pages 14, 15, 16 and 17, now form a part of and belong to said Sheffield and Birmingham Coal, Iron and Railway Company, and upon which the said mortgage or deed of trust of 1st June, 1888, has attached, except so far as said property form a part of the depot grounds or right of way for what was formerly known as the Sheffield and Birmingham Railroad Company,

and which is now known as the Birmingham, Sheffield and Tennessee River Railway Company, which said property has been acquired since the dates of the two aforesaid mortgages or deeds of trust. And the court further finds that since giving the said two aforesaid mortgages and deeds of trust, the said Sheffield and Birmingham Coal, Iron and Railway Company has acquired the whole property set forth and described on page 10, in section 4, of said mortgage of 1st June, 1888 which formerly belonged to the Sheffield and Bessemer Mining Company, as therein described and set forth. And the court further finds that the schedule attached to this decree, and marked "Schedule A", sets forth and describes fully and properly all the properties, real and personal, rights, interest, claims and demands and franchises, upon which this foreclosure, under which the two aforesaid mortgages is made, the property covered by each of the said mortgages being set forth separately, and which schedule is identified by the certificate and signature of J. G. Chamberlain, receiver herein, and marked filed in court on the third day of December, 1889.

Seventh. The court further finds that all the properties rights, demands and franchises, set forth and described in said mortgage or deed of trust of 1st June, 1888, beginning on page 39, clause six, of said deed of trust, and comprising the line of railroad and franchises formerly known as the Sheffield and Birmingham Railroad, have been eliminated from the said deed of trust, as well as from the ownership, right, title, claim, interest or demand of said Sheffield and Birmingham Coal, Iron and Railway Company, and that said railroad and branches, now known as the Birmingham, Sheffield and Tennessee River Railway, are in no wise to be affected by or connected with this foreclosure, and do not form any part or parcel of the property, rights and franchises to be sold by or under this decree of foreclosure and sale, but that only the property, rights and franchises as set forth and described in "Schedule A" hereinbefore referred to as annexed to this decree, are to be affected by or sold under this decree of foreclosure and sale.

It is therefore considered, ordered, adjudged and decreed, and this court doth hereby order, adjudge and decree that the

defendant, Sheffield and Birmingham Coal, Iron and Railway Company, within twenty days from the date of this decree, pay into this court the following sums for the use and benefit of the holders of the mortgage bonds secured by said mortgages dated January 21, 1888, and June 1st, 1888, respectively, and also a sufficient sum of money in addition to pay the costs taxed in this cause and the several causes pending between the parties hereto, and the costs to be taxed in the various interventions filed herein, together with the expenses and allowances of the complainant for compensation, counsel fees, and other disbursements, and all fees and expenses of the receivership, to be allowed by the court, and all other fees and expenses allowed by this court.

1. For the use and benefit of the holders of the bonds and unpaid coupons secured by the mortgage of the defendant company, dated January 2d, 1888, and known as the furnace mortgage, the amount of the due and unpaid interest on said bonds, as hereinbefore ascertained and declared, with six per per cent. interest thereon from the dates hereinbefore set forth to the date of such payment.

2. For the use and benefit of the holders of the bonds and unpaid coupons secured by the mortgage of the defendant company, dated June 1, 1888, and known as the $400,000 mortgage, the amount of the due and unpaid interest on said bonds, as hereinbefore ascertained and declared, with six per cent. interest thereon from the dates hereinbefore set forth to the date of such payment.

It is further ordered, adjudged and declared, that in default of such payment at or before the sale hereinafter ordered by the said defendant, the Sheffield and Birmingham Coal, Iron and Railway Company, or by any other person or corporation on its behalf, or by any person or corporation equitably entitled to make such payment, all equity of the said defendant, Sheffield and Birmingham Coal, Iron and Railway Company, and of all persons or parties claiming under it since the execution of said respective mortgages, and of all the parties to this suit, and of all holders of bonds issued under said mortgages, or either of them, or of the coupons or interest appertaining thereto, of, in or to the said mortgaged premises, prop-

erty, rights, privileges, immunities, assets and franchises, and every part and parcel thereof described and embraced in the said mortgage deeds, or either of them (excepting such parts thereof as have been heretofore released by the said trustee from the lien of said mortgages, or either of them, or which have since the respective dates of said mortgages been acquired by the defendant company, or by Jacob G. Chamberlain, the receiver appointed in this suit), shall be forever barred and foreclosed.

It is further ordered, adjudged and decreed, that in default of such payment within said twenty days, all of said premises, property—real, personal and mixed—rights, assets, privileges, immunities and franchises, shall be sold in the manner and upon the terms hereinafter directed. Such property shall be sold as hereinafter provided, without appraisement or redemdemption, and without benefit of any stay, valuation or relief, at public auction, beginning at twelve o'clock noon, at the front door of the building whereby law the sales made under decree of this circuit court, in Huntsville, in the State of Alabama, on a day to be named by the special master herein appointed, in his advertisement of sale, or the day to which he may adjourn the same, as hereinafter stated, previous notice of the time and place of said sale being given by publication once a week for six successive weeks in three newspapers, one published in Huntsville, Ala., one in Sheffield, Ala., and one in the City of New York; such advertisement to contain a brief description of the property to be sold, referring to this decree for further details. The special master making such sale may either personally, or by some person to be designated by him, and to act in his name and by his authority, adjourn the sale from day to day, or week to week, or otherwise, without further advertisement, but only on request of the complainant herein, or its solicitors, or by an order of a judge of this court. The said special master shall proceed to publish said notice of sale forthwith upon being requested so to do by the complainant's solicitors at any time after —— days from the date of this decree.

And it is further ordered, adjudged and decreed, that said sale shall be made subject to any and all outstanding contractors', mechanics', vendors' or other liens covering or embrac-

ing said properties or premises, or any part thereof, which constitute liens upon said property prior to the lien of the mortgages foreclosed in this suit, and which have not been ascertained and adjudicated by this court; and expressly subject to the receiver's certificates heretofore authorized to be issued by said Jacob G. Chamberlain, receiver, to an amount not exceeding $150,000, said receiver's certificates being a first and prior lien upon said properties as between them and the two mortgages aforesaid, or either of them, and the amount of said receiver's certificates issued and constituting such lien as set forth in "Schedule B," hereto annexed, and made a part of this decree. And the purchaser or purchasers of said property shall take the same upon the express condition that he or they will pay off and satisfy any and all claims now pending and undetermined in this court accruing prior to the appointment of the receiver herein, and during the receivership, which may be allowed by this court as prior in right to said mortgages, or either of them, together with such interest as may be allowed, and all costs and expenses connected with such pending and undetermined suits properly chargeable thereto; and also upon the express condition that such purchaser or purchasers will pay off, discharge and satisfy all debts, claims or demands of whatsoever nature which have been or may be hereafter incurred by said Jacob G. Chamberlain, receiver, and which have not been or may not be hereafter paid by said Jacob G. Chamberlain or any party in interest herein. And said purchaser or purchasers, their successors or assigns, shall have the right to appear and make defence to any claim, debt or demand sought to be enforced against said property now in suit or hereafter to be sued on, and to use the name or names of any parties to this suit in the prosecution or defence of such claims; and said purchaser or purchasers, their successors and assigns, shall also have the right to enter appearance in this or any other court, and contest any claim or demand pending and undetermined at the date of confirmation of said sale. All claims, debts and demands accrued during the receivership herein shall be barred unless presented as provided, within six months after the confirmation of said sale: and jurisdiction of this cause is retained by this court for the purpose of enforcing the provisions of this article.

And it is further ordered, adjudged and decreed, that of the purchase price bid at such sale, if the properties covered by both mortgages shall be sold as an entirety, a deposit amounting to the sum of fifty thousand ($50,000) dollars shall be paid in cash to the special master at the time of sale, and shall be deposited in the registry of this court to the order of the court in this cause. If separate bids be made and accepted for separate portions of the property to be sold, then the deposit so to be made for the purchase of the furnace properties covered by the morfgage of 2d January, 1888, shall not be less than thirty-five thousand ($35,000) dollars, and the deposit to be made for the purchase of the properties covered by the mortgage of 1st June, 1888, shall be not less than fifteen thousand ($15,000) dollars. In addition to the deposit or deposits made at the time of sale, such further portions of the purchase price shall be paid in cash and deposited as the court, or a judge thereof, in this cause may from time to time direct, the court reserving the right to resell in this cause the premises and and property herein directed to be sold, or any part sold separately, upon the failure of the purchaser or purchasers thereof, or their successors or assigns, to comply within twenty days with the order of the court in that regard, or with the terms and conditions of sale. And in case of any resale upon the failure of the purchaser or purchasers to comply with the terms and conditions of the sale or orders of the court relative to such additional partial payments, as may from time to time be directed, all sums paid in by such purchaser shall be forfeited as a penalty for such non-compliance. If any sale for which a deposit is made be not confirmed by the court such deposit shall be returned to the bidder.

Any further amounts to be paid on the purchase of all or any part of the property may be paid either in cash or in bonds and over due coupons belonging thereto, secured by the mortgages herein above set forth, or either of them, the same being received at such price or value as would be equivalent to the distributive amount that the holders thereof would be entitled to receive in case the entire amount of the bid were paid in cash.

David D. Shelby, Esq., is hereby designated as special master, and directed to make the sale hereby decreed, and

to execute and deliver a deed of conveyance to the property so to be sold, to the purchaser or purchasers thereof, on the order of the court or a judge thereof, acting at chambers, confirming such sale. The court reserves, however, the right, in term time or at chambers, to appoint another special master with like powers, in case of the death or disability to act of the special master hereby designated, or in case of his resignation or failure to act or removal.

The said special master herein appointed to make such sale shall offer the property of the defendant company for sale as follows, namely:

(1) He shall first offer for sale all the property and premises, rights, privileges, immunities and franchises of every kind and description covered by the mortgage dated Jany. 2, 1888, known as the furnace mortgage, as one parcel and as an entirety.

(2) He shall next offer for sale all the property and premises, rights, privileges, immunities and franchises of every kind and description covered by the mortgage dated June 2, 1888, known as the $400,000 mortgage (not including, however, the line of railroad and branches formerly known as the Sheffield and Birmingam Railroad) and not covered by said furnace mortgage dated January 2, 1888, as one parcel and as an entirety.

(3) Having so offered said properties for sale separately and as entirety, the whole of the aforesaid mortgaged properties of every sort and description of the Sheffield and Birmingham Coal, Iron and Railway Company, wherever situated and of whatever sort and nature (not including, however, the line of railroad and branches formerly known as the Sheffield and Birmingham Railroad); and if the highest bid received by him for the said property so last offered for sale shall exceed the aggregate amount of the highest bids for the portions of said property so last offered when offered separately, then the whole so last offered shall be struck off and sold as an entirety to the person making the bid; and the proceeds shall be divided into two parts in proportion to the amounts bid separately on the constituent parts, and distributed to the bondholders in the same manner as if the constituents parts had been sold separately. And the costs, expenses, fees and com-

pensation shall likewise be paid pro rata if the constituent part shall be sold separately.

It is further ordered, judged and decreed, that the entire fund to arise from such sale or sales shall be applied as follows:

(1) To the payment of the costs of this cause, together with the costs and expenses of executing this decree; the compensation of complainant, as trustee, for his services, charges and expenses in executing its trusts, and the compensation and expenses of its solicitors and counsel; and the compensation and expenses of said receiver, Jacob G. Chamberlain, and of his solicitors and counsel, so far as the same shall not have been already paid and retained by said receiver, all of which sum shall be ascertained, fixed and determined by this court, or a judge thereof, upon the confirmation of such sale. Also to the payment of such sums as shall have been decreed and adjudged by this court to be prior and paramount in equity to the lien of said mortgages, or either of them, and which shall not have been otherwise paid or authorized to be paid.

(2) From the proceeds of the sale of the property covered by said mortgage dated January 2, 1888, known as the furnace mortgage, shall be paid the amount of the bonds, coupons, and interest secured by that mortgage, in full with interest on the principal of said bond, from Jluy 1, 1889, at the rate of six. per cent per annum, and with interest on the coupons and past due interest upon said bonds as hereinabove provided in case of redemption by the defendant company. If such balance shall not be sufficient to pay the same in full, then the same shall be paid ratably without preference of interest over principal. If such balance be more than sufficient to pay the same, then the rest shall be added to the fund applicable to pay said bonds of the $400,000 issue secured by said mortgage dated July (?) 1st, 1888.

(3) From the proceeds of the sale of the property covered by said mortgage dated June 1, 1888, known as the $400,000 mortgage, to which shall be added any sum remaining after payment of bonds and coupons secured by said mortgage dated January 2, 1888, as aforesaid, shall be paid the amount of the bonds, coupons and interest secured by said mortgage dated June 1, 1888, in full, with interest upon the prindipal of

said bonds from December 1, 1889, at the rate of six per cent. per annum, and with interest upon the coupons and past due interest upon said bonds, as hereinabove provided in case of redemption by the defendant company. If such balance shall not be sufficient to pay the same in full, then the same shall be paid rateably, without preference of interest over principal. If such balance be more than sufficient to pay the same, then the rest shall be paid according to the further order of court in that behalf.

All bonds and coupons that are paid in full shall be cancelled by said special master, and all those that are only partially paid shall be so stamped and returned to the owners thereof.

As soon as said special master shall have received the purchase price of said properties he shall publish once a day for ten days, in some newspaper published in the city of New York, and in some newspaper published in Huntsville, Ala., a notice fixing a time, not less than ten days after the last publication of said notice, when he will be ready to pay the bonds and coupons entitled to be paid out of the proceeds of said sale, and all interest on said bonds and coupons shall cease at the time so fixed in said notice.

Said special master shall also give proper notice, by publication once a week for four weeks, in a newspaper published in each of the cities of Huntsville, Ala., and Sheffield, Ala., to any and all persons, other than holders of bonds or coupons, entitled to share in the distribution of said proceeds of sale, to present their demands and the evidence thereof for payment of the respective amounts to be paid thereon on presentation to this court, within a time limited in said notice.

And it is further ordered, adjudged and decreed, that the defendant, Sheffield and Birmingham Coal, Iron and Railway Company, shall, as a further assurance to the purchaser or purchasers, join with the special master hereby appointed, in the execution of the deed or deeds made by him to the purchaser or purchasers of the properties above ordered to be sold, and thereby convey and release all said properties and all its right, title and interest in the same respectively and every part and portion thereof.

And it is further ordered, adjudged and decreed, that the

purchaser or purchasers of the property herein ordered to be sold, shall be invested with and shall hold, possess and enjoy the said premises and property herein directed to be sold, whether owned at the commencement of this suit or since acquired, and all the rights, privileges and franchises appertaining thereto, as fully and completely as the said Sheffield and Birmingham Coal, Iron and Railway Company, and Chas. D. Woodson, defendants herein, now hold or enjoy or at the time of the commencement of this suit, or at the time of the filing of the amended and supplemental bill herein, held and enjoyed, or are or were entitled to hold and enjoy the same. And at the time of the execution of the said deed the said J. G. Chamberlain, receiver, shall, as the court shall hereafter direct, make, execute and deliver to the said purchaser or purchasers a good and sufficient deed of conveyance in fee simple of any and all property vested in or standing in the name of said receiver, or to which the said receiver has in any any manner acquired title; and that the purchaser or purchasers shall have or be entitled to hold said properties free and discharged from the lien or encumbrances of the said two mortgages, and from the claims of all parties to this suit and of each and every persons whose interest are in any manner represented by any party to this suit, except as hereinbefore provided.

And it is further ordered, adjudged and decreed, that upon the execution and delivery of the conveyance or conveyances aforesaid, the said purchaser or purchasers, his or their representatives or assigns, shall be let into possession of the said mortgaged premises on demand, after confirmation of the sale to be made by the said special master.

It is further ordered, adjudged and decreed, that in event said respective properties, rights and franchises, secured by the aforesaid two mortgages or deeds of trust, should be sold in separate parcels and deeds made separately for same, that then and in that event the receiver's certificates that may be issued and outstanding at the date of the confirmation of the sale of said properties, shall be assumed and paid by the respective purchaser or purchasers of said properties, as between themselves pro rata in proportion to the amount that said properties respectively received from the proceeds of said

receiver's certificates, which amount is to be arrrived at by the report of the receiver as to such expenditures, to be filed in this court And it is further ascertained, considered, adjudged and decreed by the court, that the properties known as the furnace department of the Sheffield and Birmingham Coal, Iron and Railway Company, and on which said 987 bonds dated 2d January, 1888, are first mortgage liens, are indebted to those properties heretofore known as the coal and coke department of said defendant company, and on which said 400 bonds dated 1st June, 1888, are a first mortgage lien in the sum of twenty-two thousand, seven hundred and sixty-four dollars and 89-100 ($22,764.89), with interest at the rate of 6 per cent. per annum from the 12th day of January, 1889, on said sum, and this sum of money, with interest, is hereby declared and adjudged to be a lien upon said properties known as the furnace department of said defendant company, and shall be paid by the purchasers of said furnace department to the purchasers of said coal and coke department properties, in event such respective properties shall be sold and deeded separately under this decree of foreclosure and sale. But this decree shall not be so construed as in any way to effect and invalidate the lien of said receiver's certificates in the hands of the holders thereof, upon the whole or any part of the properties secured by either of said respective mortgages; and the holders of said receiver's certificates are authorized to proceed and enforce the collection of same if not paid at maturity, upon the whole or any part of the mortgaged properties without reference to how said properties were bid in and bought at this foreclosure and sale, or by whom said proper ies may be held or owned at the time said receiver's certificates may fall due.

And it is further ordered, that said special master make report to this court, or a judge thereof, of all his proceedings in the premises, with all convenient speed after said sale shall have taken place.

The property embraced in and covered by said mortgages, which is hereby directed to be sold, is as follows, viz:

All the right, title and equity of redemption of the Sheffield and Birmingham Coal, Iron and Railway Company, or of J. G. Chamberlain, receiver, or any of the parties to this cause, in

and to all and singular the rights, estate and property, real, personal and mixed, and all fixtures, rights, privileges, franchises, easements, rights under leases, terms and parts of terms, agreement, covenants and contracts, of all and every kind, at any time held and owned or occupied by or belonging to the said Sheffield and Birmingham Coal, Iron and Railway Company, including all and singular the property, rights, lands, furnaces, coal mines, coking ovens, appurtenances and franchises set forth and described in "Schedule A" hereto annexed, and hereinbefore referred to, and all equity of redemption in the same, together with all and singular the tenements, hereditaments and appurtenances of the premises aforesaid, or any of them or any part thereof, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the said Sheffield and Birmingham Coal, Iron and Railway Company of, in and to the same, and every part and parcel thereof.

The court hereby expressly reserves for further consideration all the matters pertaining to said cause not herein adjudicated and determined.

Dec. 3, 1889. (Signed) HARRY T. TOULMIN,
U. S. Judge.

BUTLER, STILLMAN & HUBBARD,
Solicitors for Complainant.

HENRY B. TOMPKINS, of Counsel.

Endorsed: Filed Dec. 3, 1889.
A. W. McCULLOUGH, Clerk.

SCHEDULE "B."

(Schedule of property mentioned in decree of foreclosure and sale left out by consent).

RECORD OF RECEIVER'S CERTIFICATES SOLD BY STEINER BROTHERS.

Certificates Nos. 41 to 90, first and last numbers inclusive, fifty certificates, $1,000 each, dated Nov. 5, 1889, payable in thirty-six months from date, at the office of Landenburg, Thal-

man & Co., 46 Wall street, New York, N. Y., interest seven per cent., payable semi-annually at same place.

Fifty certificates, $1,000 each, ...	$50,000.00
Less five per cent. commission for selling .	2,500.00
Net proceeds placed to the credit of the receiver, at the banking house of Steiner Brothers, Birmingham, Alabama, ...	$47,500.00

Certificates Nos. 91 to 120, first and last numbers inclusive, thirty certificates, $1,000 each, dated Nov. 5, 1889, payable in thirty-six months from date, at the office of Landenburg, Thalman & Co., 46 Wall street, New York, N.Y. Interest seven per cent., payable semi-annually at same place. These thirty certificates to be delivered Dec. 5, 1889.

Thirty certificates, $1,000 each, ...	$30,000.00
Less five per cent. commission for selling, . .	1,500.00
Net proceeds to be placed to the credit of the receiver, at the banking house of Steiner Brothers, Birmingham, Ala., ...	$28,500.00

Certificates Nos. 121 to 150, first and last numbers inclusive, thirty certificates, $1,000 each, dated Nov. 5, 1889, payable in thirty-six months from date, at the office of Landenburg, Thalman & Co., 46 Wall street, New York, N. Y. Interest seven per cent., payable semi-annually at same place. These thirty certificates to be delivered Jan. 5, 1890.

Thirty certificates, $1,000 each, ...	$30,000.00
Less five per cent. commission for selling, . .	1,500.00
Net proceeds to be placed to the credit of the receiver, at the banking house of Steiner Brothers, Birmingham, Ala., ...	$28,500.00

Endorsed: Filed in court 3d Dec., '89.

A. W. McCULLOUGH, Clerk.

RECORD OF RECEIVER'S CERTIFICATES SOLD BY C. D. WOODSON.

Certificates Nos. 1, 2 and 3, for $5,000 each, dated Sept. 19, 1889, payable in thirty-six months from date, at National

Park Bank, New York, N. Y. Interest six per cent., payable semi-annually at same place.

Certificates Nos. 8, 9, 10, 11 and 12, for $5,000 each, dated Oct. 10, 1889, payable in thirty-six months from date, at National Park Bank, New York. Interest six per cent., payable semi-annually at same place.

Eight certificates, $5,000 each, . . .	$40,000.00
Less six per cent. commission for selling, . .	2,400.00
Net proceeds placed to the credit of receiver, at First National Bank of Sheffield, Ala., .	$37,600.00

United States of America,
Northern District of Alabama,
Northern Division.

I, A. W. McCullough, clerk of the circuit court of the United States of America, in and for said division of said district, do hereby certify that the following is a true, full and complete copy of the original decree of foreclosure and sale in the cause of Central Trust Company of N. Y. vs. the Sheffield and Birmingham Coal, Iron and Railway Company, as fully as the same does appear of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this 31st day of December, 1891.

[Seal.] A. W. McCULLOUGH,
Clerk of the U. S. Circuit Court.

PETITION OF RECEIVER TO MODIFY DECREE OF FORECLOSURE AND SALE.

In the Circuit Court of the United States for the Northern District and Division of Alabama. In Equity.
At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company, and another.

Petition and intervention of Jacob G Chamberlain, receiver,

for the amendment of the decree of foreclosure and sale, granted December 3d, 1889.

Your petitioner respectfully sets forth and shows that there was attached to said decree certain papers marked Schedule "B," which set forth and showed that certain five receiver's certificates, for five thousand dollars each, and numbered respectively, eight, nine, ten, eleven and twelve, and dated 10th October, 1889, payable thirty-six months from date, at the National Park Bank in the City of New York, bearing interest at six per cent. per annum, payable semi-annually, were placed in the hands of C. D. Woodson, of Sheffield, Ala., president of the First National Bank of Sheffield, Ala., and he was to place twenty thousand dollars to my credit in First National Bank of Sheffield, Ala., and if negotiated by him a commission of six per centum for selling them would be allowed, leaving the net proceeds to be placed to the credit of said receiver, in the First National Bank of Sheffield, Ala., the sum of $23,500, which I could check out when I needed the money.

Petitioner further shows that on the 13th day of October, 1889, while said C. D. Woodson was in the City of New York, and in possession of said certificates, for the purpose aforesaid, that petititioner sent to C. D. Woodson, from the City of Atlanta, on Sunday, 13th day of October, 1889, the following telegram, to-wit:

"13th Oct., 1889.

To Charles D. Woodson,
Care Fifth Avenue Hotel
New York, N. Y,

Do not place receiver's certificates under any circumstances, as I have given option for their sale. Also return acceptance of ten thousand dollars to me at Sheffield at once. Answer here.

(Signed) J. G. CHAMBERLAIN."

And received on the same day a reply from said C. D. Woodson to petitioner by telegram, as follows:

"Received at Atlanta, Ga., Oct. 13th, 1889.
New York, 13.
J. G. Chamberlain,
Care H. B. Tompkins, Atlanta, Ga.

Telegram received. Will return to you the papers as requested. (Signed) C. D. WOODSON."

Petitioner further represents and shows to the court that said C. D. Woodson did not comply with the request of petitioner, as he agreed to do, and return said certificates to him, but, as said C. D. Woodson has since admitted, disposed of said certificates on the day following the receipt of said telegram sent by petitioner on 13th October, 1889. Afterwards, upon said C. D. Woodson returning to the State of Alabama, he agreed with petitioner that he had placed the money so received from said certificstes to the credit of petitioner in said First National Bank of Sheffield, Ala., and that the books of the bank would so show. Since that time said bank has suspended payment, has closed its doors, a United States bank examiner has gone through its affairs, and it will soon be placed in the hands of a receiver. Your petitioner further avers that no sum whatever has been paid your petitioner by said Woodson or said bank, or in any other way for the said five receiver's certificates, but checks presented to said bank were refused payment.

Petitioner further avers and shows to the court that he understands that said C. D. Woodson negotiated said five receiver's certificates through some broker in the city of New York, unknown to the petitioner, at and for seventy-five cents upon the dollar for the face value of said certificates and received the money therefor, but petitioner has no actual knowledge of this fact, but does know that said certificates were disposed of by said Woodson without any authority from petitioner; and not in accordance with the order of court under which they were issued. And petitioner therefore avers and charges that these five certificates are invalid and are no charge or lien whatever upon the properties of the Sheffield and Birmingham Coal, Iron and Railway Company, or upon the earnings now or that may hereafter come into the hands of your petitioner as receiver.

Wherefore petitioner prays that a copy of this petition may be served upon said C. D. Woodson, within —— days notice, to appear and answer the same, if he sees proper to do so, and that the court will pass an order modifying said decree in so

far as said "Schedule B" thereto in any wise makes or affects to make said five certificates a charge or lien upon said properties or said earnings; and that the court will grant all such further orders, judgments and decrees in the premises as may be equitable and proper.

JACOB G. CHAMBERLAIN, Receiver.

The State of Alabama, }
Colbert County. }

Before me personally came Jacob G. Chamberlain, receiver of the Sheffield and Birmingham Coal, Iron and Railway Company, who, being first sworn, deposes and says that the matters and things set forth in the foregoing petition or himself as receiver, are true, when spoken of his own knowledge, and that he believes them to be true when stated upon information and belief.

Sworn to and subscribed before me this 16th day of December, 1889.

(Seal) L. W. DIMICK,
Notary Public, Colbert Co. Ala.

Service of the within petition acknowledged and the parties hereto signing join in the petition and consent to an order being made as prayed for by the receiver. This 17 December, 1889.

CENTRAL TRUST CO. OF N. Y.
By Butler, Stillman & Hubbard, Sols.
SHEFFIELD & BIRMINGHAM COAL, IRON AND RY. CO.
By Lawrence Cooper, Sol.

Upon reading and considering the foregoing petition, affidavit and acknowledgment of service, in the matter of J. G. Chamberlain, receiver, it is considered and ordered that a copy of same, together with this order, be served upon Chas. D. Woodson, and that ten days from the service of said copy a hearing be had before me, at my chambers in the city of New Orleans, Louisiana, upon the merits of said petition of said receiver.

This the 21st day of December, 1889.

DON A. PARDEE, Circuit Judge.

Endorsed: Filed in clerk's office January 8th, A. D. 1890.
A. W. MCCULLOUGH, Clerk.

AFFIDAVITS SHOWING SERVICE UPON C. D. WOODSON OF PETITION OF CHAMBERLAIN.

State of Georgia,
Fulton County.

Before me the undersigned, a notary public in and for said State and county, personally came Henry B. Tompkins, who, being by me first duly sworn, deposes and says:

That a copy of a letter dated December 11, 1889, and addressed to Charles D. Woodson, by J. G. Chamberlain, receiver, and hereto annexed marked "Exhibit A," was, on Saturday, 28th December, 1889, acknowledged by said Woodson to have been received by him at Sheffield, soon after it was written. Affiant further swears that on said 28th December, 1889, he informed said Woodson that a telegram had been sent to Sheffield to have the petition of said receiver concerning said $25,000 of certificates so disposed of by said Woodson, and to have same declared invalid and illegal, to be returned here, so that said Woodson could acknowledge service of a copy of said petition, and consent that the same should be heard before the Hon. Don A. Pardee on 2d January, 1890. And affiant further swears that said Woodson informed affiant that he would call at affiant's office on Monday morning and acknowledge service of a copy, and consent to the same being heard after affiant had explained to him the object and purposes of the petition. Affiant further swears that said Woodson did not come to his office on Monday morning, and upon inquiry being made he was infomed that he had left the State of Georgia, and affiant believed that said Woodson had returned to the city of Sheffield, Ala., where he informed affiant he would go, and then expected to go to Chicago, State of Illinois. Finding that said Woodson had left the State, and supposing that he had gone to Sheffield, Ala., as he said he would go, affiant at once forwarded said petition with a copy thereof to said receiver at Sheffield, with instructions to have the same served upon said Woodson, and affiant has received a telegram from the office of said receiver at Sheffield, saying that Woodson was not there, which telegram is hereto annexed, marked "Exhibit B."

And affiant further swears that through said letter of 11th Dec., 1889, a copy of which is hereto annexed, and by conver-

sations had with said Woodson on Saturday, 28th December 1889, and on two or three occasions before that time, said Woodson was fully informed of the contents of the petition to be made by said receiver to have declared null and void said $25,000 of receiver's certificates so disposed of by said Woodson, and to have the decree of foreclosure and sale granted on 3d December, 1889, changed and amended.

HENRY B. TOMPKINS.

Sworn to and subscribed before me, this the 1st day of January, 1890.

J. M. SHELLY,
N. P. Fulton Co., Ga.

(Seal.)

EXHIBIT A.

Sheffield, Ala., December, 11th, 1889.

Charles D. Woodson, Esq.,
Sheffield, Ala.

Dear Sir:

As I understand the transaction about the $25,000 receiver's certificates disposed of by you in New York in October last, the facts are substantially these:

You received the certificates from me to be disposed of for a commission not to exceed six per cent., but before you disposed of them you received my telegram from Atlanta of 13th October, instructing you not to dispose of them, but to return the certificates with other papers to me at Sheffield, and you replied by telegram that you would do so. After receiving that telegram you disposed of the certificates, as I understand, at 75c. on the dollar.

Now, I am informed by Judge Tompkins, who has been examining the matter from a legal point of view, that receiver's certificates are not negotiable securities like bonds or notes and that the purchaser is bound in law to know what the order of the court is authorizing their issue; this order of court authorizing certificates to be issued, bearing not more than 7 per cent. interest, and to be sold for a reasonable commission. So, whether or not the party through whom you negotiated the certificates knew that you had purchased them outright from me, the sale, under the circumstances, is null and void, and the certificates cannot be made a lien against the property

of the company. And as you have not disclosed to me to whom or through whom the certificates were sold, I give this notice to you, as being all I can do, and say that I will apply to the court and ask that these certificates be declared invalid and illegal. As receiver I have no legal right to pursue any other course, as no part of the money for which they were sold has ever been turned over to me by you or any one else.

Yours very truly,

(Signed.) J. G. CHAMBERLAIN, Receiver.

EXHIBIT B.

Number 152 N. Sent by G. Received by Du. 11 paid.
Atlanta, Ga., 8:56 P. M.

Dated Sheffield, Ala., 31.

To Judge H. B. Tompkins:

Woodson not here. Chamberlain probably not return before Thursday or Friday.

(Signed.) SAM G. CHAMBERLAIN.

The State of Alabama, }
Colbert County. }

Before me, R. H. Wilhoyte, a notary public in and for State and county, personally came Jacob G. Chamberlain, receiver of the Sheffield and Birmingham Coal, Iron and Railway Co., who, on oath says, that he has read the foregoing affidavit of of Henry B. Tompkins, and the letter and telegram thereto annexed as "Exhibits A" and "B." Affiant further states that "Exhibit A" is an exact copy of a letter written and delivered to Chas. D. Woodson on the 11th day of December, 1889. That affiant spoke with said Woodson about said letter after said Woodson had received it, and also spoke with him about acknowledging service upon the petition referred to in the affidavit of said Tompkins, and that said Woodson thoroughly informed of the nature and objects of said petition.

Affiant further makes oath that said Chas. D. Woodson has not returned to Sheffield since he left here on the day before Christmas last, and that he is informed and believes that said Woodson is in Chicago, State of Illinois, and he does not

know if he has removed permanently from said State of Alabama, nor when he is likely to return.

(Signed) JACOB G. CHAMBERLAIN.

Sworn to and subscribed before me, this the 3d day of January, 1890.

[Seal] R. H. WILHOYTE,
Notary Public.

Pending in the Circuit Court of the United States for the Northern District and Division of the State of Alabama, in Equity. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Co. et al.

I, J. G. Chamberlain, receiver in the above styled cause, make oath, that on the 11th day of December, 1889, I gave to C. D. Woodson written notice that as receiver aforesaid, I would at once make application in this cause to have the court decree and declare the five receiver's certificates for five thousand dollars each, issued under a former order in this cause, invalid and illegal because negotiated without authority and contrary to positive instructions. And further, that I gave said C. D. Woodson notice of the contents of the petition hereto attached, and notified him that such petition would be at once filed in this cause and copy thereof served upon him. Said C. D. Woodson is not now in the State of Alabama, but has left the State since the aforesaid notice was given him.

(Signed) J. G. CHAMBERLAIN.

State of Alabama,
Colbert County.

I, R. H. Wilhoyte, a notary public in and for said county and State, do hereby certify that on this the 2d day of Jan., 1890, appeared before me J. G. Chamberlain, and made oath that the statements contained in the foregoing affidavit are true.

Witness my hand and seal this Jany. 2d, 1890.

(Seal) R. H. WILHOYTE,
Notary Public.

State of Louisiana, Parish of Orleans, }
City of New Orleans. }

Before me, the undersigned, personally comes Henry B. Tompkins, of counsel for the Central Trust Co. of N. Y., in the case of that company against Sheffield and Birmingham Coal, Iron and Railway Company and another, who first being duly sworn deposes and says:

Charles D. Woodson, one of the defendants to the above stated cause, left the office of affiant, in Atlanta, Ga., on Saturday, the 28th Dec., 1889, saying that he would return on Monday morning, the 30th Dec., 1889; and that when leaving Atlanta he would go to Sheffield, Ala., where he had resided for about three years.

Affiant further swears that on arriving at New Orleans on 2d January, 1890, he learned that said Woodson had arrived at the Hotel Royal, in N. O., to breakfast on the morning of Sunday, the 29th Dec., 1889, had registered as C. D. Woodson, Atlanta, Ga., and after remaining until Monday A. M., on 30th Dec., 1889, had left on the Southern Pacific R. R., at the time inquiring when and from what place the steamer left for Cuba. Affiant has seen the hotel register, and knows the writing to be that of C. D. Woodson, and believes that said Woodson has departed from the United States, and has gone either to Cuba or Mexico.

Affiant makes this affidavit as supplemental to the one made by him in Atlanta, Ga., on the 1st day of January, 1890.

(Signed) HENRY B. TOMPKINS.

Sworn to and subscribed before me this 3d day of January, 1890.

E. R. HUNT,
U. S. Commissioner.

Endorsed: Filed in clerk's office January 8th, 1890.
A. W. MCCULLOUGH, Clerk.

ORDER OF COURT GRANTING PETITION OF CHAMBERLAIN, RECEIVER.

In the United States Circuit Court for the Northern District and Northern Division of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

In re. Petition of Jacob G. Chamberlain, receiver, for modification of decree of foreclosure and sale.

It appearing that the complainant and the defendant corporation consent to the prayer of the petition of said receiver, it is, upon consideration, ordered and adjudged by the court that the said decree of foreclosure and sale, taken on 3d December, 1889 be modified and amended as follows:

That there be striken from said decree these words, "And expressly subject to the receiver's certificates heretofore authorized to be issued by said Jacob G. Chamberlain, receiver, to an amount not exceeding one hundred and fifty thousand dollars," and that in the place and stead of said words there be inserted these words: "And expressly subject to the receiver's certificates heretofore authorized to be issued by said Jacob G. Chamberlain, receiver, to an amount not exceeding one hundred and twenty-five thousand dollars, and that the twenty-five thousand of said certificates disposed of by Chas. D. Woodson, the same being five certificates of $5,000 each, and numbered 8, 9, 10, 11 and 12, dated 10th October, 1889, and set forth in "Schedule B" to said decree, be not included in said amount of one hundred and twenty-five thousand dollars, but that the purchasers of said properties at the sale, under said decree, take the same subject to the right to resist the payment of said five certificates so disposed of by said Woodson; and that the validity of such five certificates be adjudicated only in this court upon a proper case to be made by parties in interest."

This 4th day of January, A. D. 1890.

(Signed) DON A. PARDEE,
Circuit Judge.

Endorsed: Filed in clerk's office this 8th day of January, 1890. A. W. McCULLOUGH, Clerk.

REPORT OF SALE BY SPECIAL MASTER.

In the Circuit Court of the United States, Northern District of Alaban a, Northern Division.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

To the Honorable Judges of said Court:

The report of David D. Shelby, special master in chancery, of the sale of the properties of the defendant corporation.

First. I have to report that under and by virtue of the decree of foreclosure and sale rendered in the above stated cause, on the 3d of December, 1889, and after due and legal advertisement as provided by said decree, I did proceed and sell said properties at 12 o'clock, noon, on Monday, the 21st of April, 1890, at the door of the court-house in Madison county, Alabama, as follows:

There was first offered for sale all the property and premises, rights, privileges, immunities and franchises of every kind and description, covered by the mortgage or deed of trust dated January 2nd, 1888, for $1,000,000, known as the furnace mortgage, as one parcel and as an entirety.

Said property, rights, assets, privileges, etc., being now in the custody of the receiver, Jacob G. Chamberlain, and I received therefor, as the highest and best bid, the sum of three hundred and fifty thousand dollars ($350,000), by Napoleon Hill as trustee, and said bid was duty accepted, and the property, rights, assets, etc., knocked off and sold to said Napoleon Hill as trustee, he having then and there deposited with me the sum of thirty-five thousand dollars in cash, as provided in said decree. The properties so sold to Napoleon Hill as trustee, were the three hot-blast iron furnanes, and the site of 60 acres on which they are situated, and the appurtenances, rights, members, property and assets thereto belonging. Also,

the seventy thousand acres of mineral lands and mineral rights as set forth in the deed of trust of the 2d January, 1888, and in "Schedule A" annexed to said decree of foreclosure and sale.

These properties so sold to Napoleon Hill, trustee, are subject to the lien of certain receiver's certificates, amounting to $125,000, but a certain portion of such certificates are to be paid by the purchasers of the other properties covered by the mortgage or deed of trust for $400,000, sold to J. C. Neely, trustee, as hereinafter set forth. Such portion of said receiver's certificates so to be paid by the purchaser, Napoleon Hill, trustee, to be more accurately defined by the reports of the receiver, showing the amount realized from such certificates that went into such furnace and land properties. And these properties also subject to any lien that may finally be ascertained as against said three iron furnaces alone in favor of Gordon, Strobel & Laureau, in an intervention now pending in this court, wherein a report by the master in chancery has been made in favor of said intervenors for $57,808.12, besides interest, and to which report exceptions have been filed. And also subject to such other amounts as have been or may be established as liens against said properties by said final decree of foreclosure and sale, and such sums as are shown by the interventions in this court to be due, and such taxes due on said properties and as are yet unpaid by the receiver—all of which will appear from the final report of the receiver.

Second. There has been offered for sale all the property and premises, rights, privileges, immunities and franchises of every kind and description, covered by the mortgage or deed of trust dated 1st June, 1888, for $400,000, known as the coke and coal mortgage, as one parcel and as an entirety. Such property, rights, assets, privileges, etc., now being in the custody of said receiver; and I received therefor, as the highest and best bid, the sum of one hundred and fifteen thousand dollars ($115,000) by James C. Neely, as trustee, and said bid was duly accepted, and the property, rights, assets, etc., knocked off and sold to said James C. Neely, as trustee, he having then and there deposited with me the sum of fifteen thousand dollars in cash, as provided in said decree.

The properties so sold to James C. Neely, as trustee, were the fifty acres of land, more or loss, at Jasper, Walker County, Ala., and upon which the 108 coke ovens of the defendant company are situated. (2) The mineral lands and mineral rights known as the Townley Coal Mine property, situated in Walker County, Alabama. (3) Certain coal land adjoining said Townley coal mining property, being about 1280 acres. (4) Mineral rights and lands lying in Jefferson County, Alabama, comprising about 680 acres of coking coal lands and the mines, openings, appurtenances, etc. (5) Certain lots of real estate lying along the line of the Birmingham, Sheffield and Tennessee River Railway (formerly the Sheffield and Birmingham Railroad). All of which property, rights, members, appurtenances, assets and franchises, are fully set forth in "Schedule A" annexed to said decree of foreclosure and sale; and the same together with the rights, properties and assets thereto belonging or appertaining, are in the custody and control of said receiver. These properties so sold to James C. Neely, trustee, are subject to the lien of certain receiver's certificates amounting $125 000; but a certain portion of said certificates are to be paid by the purchasers of the other properties covered by the mortgage or deed of trust for $1,000,000 hereinbefore set forth as sold to Napoleon Hill, trustee. Such portion of said receiver's certificates so to be paid by said purchaser, James C. Neely, trustee, to be more accurately defined by the reports of the receiver, showing the amounts realized from such certificates that went into such coal and and coke properties. And these coal and coke properties also sold subject to such other amounts as have been or may be established as liens against said properties by said final decree or under interventions filed in this cause in this court, and yet unpaid by the receiver, and for taxes due on said properties—all of which will appear from the final report of the receiver.

Third. After the aforesaid two classes of properties had been so put up and sold separately, then they were all put up by me for sale as a whole and entirety, under the provisions of said decree, and after having had the same cried for some time, no bids were received for such entire properties, and the sales

to Napoleon Hill, trustee, and James C. Neely, trustee, as aforesaid, were duly announced absolute and binding.

April 22d, 1890. D. D. SHELBY,
Special Master in Chancery.

DECREE OF COURT CONFIRMING SALE.

United States Circuit Court, Northern District and Northern Division of Alabama. No. 150. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

And now on this 10th day of May, 1890, this cause came on further to be heard upon the application of the complainant, Central Trust Company of New York, to confirm the sale made under the decree and supplemental decree herein on the 21st day of April, 1890, by David D. Shelby, Esq., special master, appointed for the purpose by the decree of this court, to Napoleon Hill, trustee, of a certain part of the property of said defendant corporation mortgaged on 2d January 1888, to secure the issue of one million dollars of bonds; and to James C. Neely, trustee, of the certain other part of the properties of said defendant corporation mortgaged on 1st June, 1888, to secure the issue of four hundred thousand dollars of bonds. And upon producing the report of the said sale made by said special master, which was made on the 22d day of April, 1890, and filed on the 28th April, 1890, no exception to said report having been filed, and sufficient notice of the said application having been given to the solicitors for the parties to this cause, and the court having fully examined the report of the sale of the special master and his doings in pursuance of the decree herein, and finding the same correct and in all respects in conformity to law and the order and decree of this court, and that the amounts bidden at such sale, as reported by said special master, to-wit: the sum of three hundred and fifty thousand dollars by Napoleon Hill, trustee, for certain portions of said property, and one hundred and fifteen thous-

and dollars by James C. Neely, trustee, for other portions of said property, were the highest and best bids for the premses and property, rights and franchises, so ordered to be sold by him at said time. And it further appearing that the said purchasers have paid the amounts in cash to be paid at the time of said sale, and are ready to pay the balance of said purchase price in money or in bonds, as provided by the terms of said decree, it is now, therefore,

Ordered, adjudged and decreed, that the said sale be and the same is hereby ratified, confirmed and approved in all respects, and the said report of said special master in that regards be and the same is hereby in all respects approved and confirmed.

And it is further ordered, adjudged and decreed, that the said David D. Shelby, special master, do proceed and carry fully into effect the provisions of said decree of foreclosure and sale by receiving from such purchasers such sums of money, additional to the sum already paid at the time of sale, if any be required, and by receiving in payment for said bids the bonds and coupons as provided in said decree of foreclosure and sale, and that when the payments shall thus be fully made by said purchasers to said special master, and he shall have settled with the outstanding bondholders who do not come in and pay the bid of three hundred and fifty thousand ($350,000) dollars in bonds, but are to receive their pro rata share in money, that then said special master make further report to the court.

And all such other and further sum or sums of money required to be paid in by the aforesaid purchasers, or either of them, fully to effectuate their bids under said decrees heretofore rendered or under this decree, it is ordered and decreed shall be paid over to the special master upon his requisition, and under the direction of the solicitors for the complainant.

It is further ordered, adjudged and decreed, that so soon as the special master shall be ready to make his report above referred to, showing that the purchasers have fully complied with their bids, that then said special master do make and execute a proper instrument or instruments in writing conveying to the said Napoleon Hill, trustee, or his assigns, the

properties purchased by him at said sale on 21st April, 1890; and conveyed to the said James C. Neely, trustee, or his assigns, the properties purchased by him at said sale on 21st April, 1890. And the said purchasers and their assigns are hereby subrogated to all rights of all lien holders parties to this suit, in and to said property, rights and franchises, except that the liens prior in right to said mortgages of 2d January, 1888, and 1st June, 1888, as established by this court, by said decree of foreclosure and sale of 3d December, 1889, and the supplemental decree of the 4th January, 1890, and otherwise by decree upon interventions and petitions, filed in this court; shall be and remain valid and binding. And the descriptions of said properties conveyed by said special master to said purchasers, Napoleon Hill, trustee, and James C. Neely, trustee, or their assigns, shall be as set forth in "Exhibit A" to said decree of foreclosure and sale.

And it is further ordered, adjudged and decreed, that said purchasers take said property and that it be recited in said deeds, and that they do take said property subject to, and that the said purchasers, or their assigns, assume and pay off any and all debts, claims and demands of whatsoever nature now pending and undetermined in this court, and which have been or may be allowed and adjudged by this court as prior to any right secured by either of said mortgages under foreclosure of which said sale was made; and likewise subject to all debts, claims and demands of whatsoever nature incurred by Jacob G. Chamberlain, as receiver, in said cause, and which may remain unpaid at the termination of said Chamberlain's receivership.

It is further ordered, adjudged and decreed, that upon the execution and delivery of said deeds, all the parties to this cause and the receiver appointed herein, shall and they are, and each of them is, hereby ordered, required and directed to surrender possession of all and singular the property, premises, rights and franchises aforesaid, so sold as aforesaid, including all funds, money, pig iron, material, rents, issues, profits and earnings then in his possession, or under his control, to said purchasers respectively, or their assigns, or to their attorneys or agents, upon the presentations of said

deeds, and demand for such possession. And further that said receiver shall thereafter file his final reports as receiver in this cause; and that questions of the distribution of funds, claims or property in the receiver's hands be reserved until the coming in of his said report.

And it is further ordered that the said special master proceed to distribute in cash the proceeds of such sales as follows:

First. That out of said fifty thousand dollars ($50,000) received at the time of the sale, he shall pay the costs and expenses of executing the decree of this court, and all court costs, including the compensation of said special master herein fixed as special master and as commissioner making the aforesaid sale, at the sum of five thousand dollars ($5,000), and that these sums be taken pro rata from the two amounts of thirty-five thousand and fifteen thousand dollars paid by Napoleon Hill and James C. Neely.

Second. That he next pay the costs of the Central Trust Company of New York, complainant herein, for its services, charges and expenses herein, the sum of two thousand dollars ($2,000), and to Butler, Stillman & Hubbard, of New York, and to Henry B. Tompkins, of Atlanta, Ga., as solicitors and counsel for said complainant, the sums of, for their services as such solicitors and counsel, fifteen thousand dollars ($15,000). To Henry B. Tompkins for his expenses eleven hundred and seventy-one and 65-100 ($1,171.65) dollars. The same ty be paid pro rata as hereinbefore set forth, out of the sum of $35,000 and $15,000.

Third. That he hold the remainder of any funds for further order of this court; and that said David D. Shelby, special master, do make a further report to this court of his actings and doings under this decree, accompanied with all proper vouchers and receipts; and this cause is retained for further consideration, orders and decrees.

May 10th, 1890.

(Signed) DON A. PARDEE,
Circuit Judge.

ORDER DIRECTING RECEIVER TO TURN OVER PROPERTY TO PURCHASERS.

In the Circuit Court of the United States for the Northern District and Northern Division of Alabama. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company and another.

This cause coming on further to be heard upon application of the solicitors for the Central Trust Co. of New York, and and of J. Chamberlain, receiver, and it appearing to the court that the purchasers at the sale made by D. D. Shelby, special master, on April 21st, 1890, have so complied with the terms of sale as to render it unnecessary that the receiver should remain in possession of the properties of the defendant corporation later than the first day of July, 1890; it is, therefore, ordered, adjudged and decreed that said J. G. Chamberlain, receiver, do deliver, on the 1st day of July, 1890, to Napoleon Hill, trustee, or to his assigns or nominees, the properties, rights and franchises so purchased by said Napoleon Hill, trustee, on 21st April, 1890. And that said receiver also deliver, on first day of July, 1890, to James C. Neely, trustee, or his assigns and nominees, the properties purchased by said Neely, on the 21st day of April, 1890, at the aforesaid sale.

And it is further ordered, adjudged and decreed, that if the final accounts and report of said receiver shall be satisfactory to the solicitors and counsel for the Central Trust Co. of New York, and there shall be no objections filed to the same by any party in interest in this cause within ten days after the same are filed with the clerk of this court, at Huntsville, Ala, that then further application may be made for confirmation of said accounts and report, and for the discharge of the receiver, to date as of the first day of July, 1890.

It is further ordered, that this cause be retained for further orders and decrees.

June 12th, 1890.

DON A. PARDEE,
Circuit Judge.

DECREE ON PETITION OF FIRST NATIONAL BANK.

In the Circuit Court of the United States for the Northern Division of the Northern District of Alabama.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Co. et al.

This cause having been submitted for decree on the report of the special master, D. D. Shelby, Esquire, on the petition of First National Bank of Sheffield.

And it appearing that there are no exceptions to said report, it is, therefore, adjudged and decreed that said report be, and the same is hereby, in all things confirmed.

It is further ordered, adjudged and decreed, that the receiver in this cause, Jacob G. Chamberlain, Esquire, pay to said First National of Sheffield, or its solicitors of record, the sum of fourteen thousand nine hundred and eighty-one 89-100 dollars, together with the sum of fourteen hundred and ninety-eight 18-100 dollars as attorneys' fees, the amount so ascertained to be due by said special master, with interest thereon from the 20th day of September, 1889.

It is further ordered, adjudged and decreed that the said First National Bank of Sheffield is entitled to a lien on the 1,500 tons of pig iron, in the mortgage exhibited with the petition in this cause described, and the said lien for the payment of said indebtedness is hereby established.

It is further ordered, adjudged and decreed, that, in the event the said Jacob G. Chamberlain, as such receiver, is without sufficient funds to pay and satisfy this decree, then he will proceed to make sale of so much of said pig iron embraced in said mortgage as will be necessary to pay and satisfy the same.

It is further ordered, adjudged and decreed, that upon the the payment of this decree the said First National Bank of Sheffield execute its receipt therefor, which shall be a voucher to the said Jacob G. Chamberlain on the settlement of his trust as such receiver.

Huntsville, Ala.

DON A. PARDEE,
Circuit Judge.

Endorsed: Filed Oct. 19th, 1889.

A. W. MCCULLOUGH, Clerk.

PASS BOOK. 1889

First National Bank, Sheffield, Ala.,
In account with J. G. Chamberlain, receiver.

Dr. 1889			Cr.		
Jany.	16,	To dep.,	2388 01	1,	255 80
	25,	"	2189 00	1,	57 40
	26,	"	1944 17	2,	882 67
	30,	"	1775 28	3,	571 00
	31,		1926 59	4,	3318 75
Feby.	1,		2083 15	6,	350 00
	2,		1489 14	7,	500 00
	5,		1632 96	8,	4300 26
	11,		10000 00	9,	18 50
	13,		3500 00	10,	1252 73
	23,		10000 00	11,	196 00
				12,	99 16
				13,	28 09
				14,	427 21
				15,	94 99
				16,	6 21
				17,	186 36
				18,	2389 15
				19,	4 35
				20,	75 00
				21,	3942 54
					468 83
					51 56
					578 83
					2500 00
					5 00
					1592 65
					350 00
					85
					892 40
					1 10
					91 00
					400 00
				Bal.	13039 91
			38,928 30		38,928 30

1889.					
Feby.	Bal. -	13039 91	Chks., - -		2005 00
27,	To dep. -	480 00	- - -		300 00
28,	" -	5 00	- -		1559 74
			- - -		5 00
			- -		214 20
			Bal. - - -		9440 97
		13,524 91			

1889.				
Dr.				Cr.
March	Bal. -	9440 97	Chks., - -	657 22
1,	To dep. -	143 25	- -	300 00
1,	-	159 75	- -	150 00
7,	-	760 00	- -	423 15
8,	-	2859 01	- -	350 00
9,	-	1074 95	- -	45 62
12,	-	2700 00	- -	1000 00
13,	-	9759 67	- -	369 20
14,	-	928 60	- -	184 80
20,	-	831 40	- -	5 35
22,	-	5535 48	- -	57 14
22,	-	22 09	- -	5417 40
27,	-	715 62	- -	918 14
27,	-	480 00	- -	196 09
28,	-	806 20	- -	350 00
29,	-	761 05	- -	27 90
			- -	231 39
			- -	10 25
			- -	9120 59
			- -	50 00
			- -	9 05
			- -	522 19
			- -	131 54
			- -	2500 00
			- -	150 00
			- -	40 00
			- -	696 30
			- -	200 00
			- -	745 60
			- -	30 00

					1804 69
					7 50
					7 00
					5299 48
					42 75
					16 50
					1613 56
					10 95
					2 66
					77 85
					334 12
					11 38
					450 00
					227 94
				Bal.	2182 83
		36,978 04			36,978 04

1889.

Dr. Cr.

April.

1,	Bal.	2182 83	Chks.		59 60
6,	To dep.	713 75			378 00
13,		2025 00			72 15
13,		41 27			2 50
15,		152 80			3 00
23,		3 00			224 42
24,		358 40			124 14
20,		9608 48			91 34
13,		9649 46			15 60
9,		9110 48			300 00
25,		165 00			70 00
25.		22 50			113 65
26,		127 17			40 00
29,		5534 39			8 25
					50 00
					135 00
					75 00
					49 48
					24 51
					341 92
					600 00

. .	25 75
. .	15 95
. .	28 00
. .	36 03
. .	4796 35
. .	15 00
. .	880 16
. .	25 00
. .	4176 29
. .	6617 65
. .	400 00
. .	946 54
. .	822 27
. .	712 19
. .	15 10
. .	28 58
. .	11 80
. .	275 55
. .	310 16
. .	15 00
. .	25 00
. .	400 00
. .	25 00
. .	58 11
. .	6 15
. .	23 55
. .	41 44
. .	32 50
. .	374 55
. .	69 83
. .	14 20
. .	6 50
. .	25 50
. .	676 33
. .	2003 78
. .	4335 86
. .	894 46
. .	3730 92
. .	12 00
. .	802 10

					25 00
					813 92
					271 81
					6 50
					18 18
					141 71
					2 00
					15 96
					29 10
					650 59
					6 50
				Bal.	1223 65
		39,694 53			39,694 53

1889.

Dr.				Cr.	
May	1,	Bal.	1223 65		112 50
	4,		9000 00		500 00
	4,		500 00		40 00
	9,		443 75		135 05
	9,		637 78		74 00
	11,		9000 00		18 50
	13,		761 05		1 55
	18,		2500 00		16 00
	23,		221 38		536 11
	23,		295 00		2487 30
	22,		175 18		835 88
	27,		4212 52		1152 72
	30,		9274 68		5 90
					350 00
					74 00
					12 00
					3 50
					157 50
					5 00
					44 12
					2 00
					7 50
					14 50
					14 28
					3 00

87 85
9 00
21 30
10 75
986 38
4723 55
75 00
578 96
7 25
858 40
39 00
8831 76
400 00
18 15
9 00
269 34
56 00
1004 25
200 00
579 94
11 83
1837 03
400 00
185 20
4 12
36 45
477 96
137 00
15 75
41 66
61 78
1 80
5 33
10 00
135 23
2 00
26 06
43 00
76 40
207 54
2106 25
1683 67

					16 35
					8 75
					400 00
			Bal.		4945 04
		38,244 99			38,244 99

1889.

Dr.				Cr.	
June 1,	Bal.	4945 04	Chks.		10 00
5,	To dep„	165 00			95 40
7,		761 05			125 00
11,		9760 84			72 80
17,		807 49			8 22
17,		9053 08			68 57
19,		224 15			14 50
22,		4591 24			509 75
25,		5000 00			40 00
27,		9465 19			14 04
29,	Int.	3 24			23 90
					44 60
					67 48
					16 00
					4 35
					85 27
					20 80
					1 20
					14 75
					15 00
					5 61
					28 25
					428 20
					10 00
					300 00
					1 50
					4 50
					1313 67
					24 00
					100 00
					33 33
					4997 80
					7 75
					9 78

. .	35 00
. .	3 85
. .	845 22
. .	62 50
. .	100 00
. .	100 00
. .	560 20
. .	7053 01
. .	285 57
. .	200 00
. .	1629 18
. .	907 88
. .	1 00
. .	500 00
. .	28 85
. .	250 00
. .	14 00
. .	450 00
. .	622 64
. .	25 75
. .	1379 02
. .	402 47
. .	13 71
. .	4 12
. .	964 79
. .	100 00
. .	24 00
. .	13 20
. .	1 90
. .	33 45
. .	15 75
. .	4067 65
. .	400 00
. .	32 00
. .	6 70
. .	11 85
. .	26 45
. .	48 30
. .	453 54
. .	21 60
. .	489 62
. .	27 75

					41 04
					46 70
					72 03
					1139 84
				Bal.	12747 62
		44,776 32			44,776 32

1889.

Dr.				Cr.	
July 1,	Bal.	12747 62	Cks.,		49 75
3,	To. dep.	222 93			3353 72
5,		1234 85			90 70
5,		4000 00			148 94
6,		52 75			150 00
11,		4437 39			83 20
15,		5489 60			325 00
19,		85 45			70 52
19,		5000 00			20 00
20,		24 44			27 50
22,		5103 76			81 75
		4636 24			11 56
					40 00
					31 15
					1097 75
					138 27
					333 55
					4851 30
					361 80
					3036 34
					350 00
					962 98
					100 00
					10 00
					275 00
					12 26
					1047 23
					301 14
					6131 87
					175 00
					102 00
					5012 50

			350 00
			1002 92
			5000 00
			34 00
			12 00
			24 00
			400 00
			31 00
			617 44
			627 03
			250 00
			35 28
			5 00
			95 22
			1200 34
			65 00
			10 80
			144 44
			22 38
			53 40
			62 75
			5 60
			300 00
			1040 31
			534 18
			12 00
			83 42
			83 33
			109 00
			373 38
			60 39
			26 50
		Bal.	1592 14
	43,035 03		43,035 03

1889.

Dr.			Cr.
Aug. 1,	Bal.	1592 14	48 19
9,	To dep.	981 15	40 00
5,		5488 00	700 00
10,		10000 00	1376 15

13,	526 62	1 30
	4312 00	113 73
	4900 00	60 74
15,	2140 18	36 57
19,	479 30	15 00
	5096 00	4 50
	4704 00	5 00
19,	480 25	10 00
		8 00
		78 10
		29 25
		10 00
		1 50
		216 33
		65 84
		10 50
		500 05
		134 70
		36 31
		275 00
		81 77
		450 00
		39 26
		122 00
		3 00
		500 00
		4 22
		1484 04
		213 48
		21 25
		21 00
		508 41
		25 00
		34 50
		25 00
		200 00
		2 95
		23 29
		4576 15
		287 50
		7466 80

. .	50 00
. .	10 00
. .	7 00
.	10000 00
. .	316 84
. .	11 50
. .	1074 12
. .	75 00
. .	1736 72
. .	1 60
. .	83 33
- -	6 10
- -	142 98
- -	150 50
- -	129 95
- -	115 87
- -	30 60
- -	1008 59
- -	31 40
- -	968 79
- -	31 10
- -	12 50
- -	119 46
- -	7 50
. .	408 82
. .	28 00
. .	246 90
. .	54 00
. .	87 00
. .	79 53
. .	213 90
. .	35 45
. .	25 50
. .	561 94
. .	3000 00
. .	1254 51
. .	50 00
. .	39 00
. .	150 00

				. .	18 00
				. .	50 00
				. .	50 00
				. .	37 00
				. .	50 00
				. .	350 00
				. .	25 00
		o-d	2049 44	. .	218 70
			43,019 08		43,019 08

1889.

Dr.				Cr.	
Sept.	2,	-	5637 54	Overdrawn - -	2049 44
	11,	-	225 00	- -	182 12
	13,	-	2000 00	- -	70
	14,	-	9750 50	- -	80 00
	18.	-	1248 04	- -	334 11
	20,	-	4740 00	- -	1138 18
	21,	-	324 11	- -	1089 00
	20,	-	5391 43	- -	68 85
	30,	-	6000 00	- -	275 00
				. .	3 30
				. .	100 25
				. .	70 00
				. .	80 00
				. .	17 28
				. .	14 00
				. .	38 40
				. .	1616 94
				. .	1 50
				. .	10 00
				. .	50 00
				. .	481 36
				. .	4380 30
				. .	300 00
				. .	1126 10
				. .	3845 50
				. .	676 40
				. .	450 00
				. .	7172 75
				. .	1 40

					1161 41
					18 40
					114 83
					50 00
					700 00
					245 68
					350 00
					443 50
					250 00
					500 00
				Bal.	5829 03
		35,316 62			35,316 62

1889.

Dr.				Cr.
Oct.	1,	Bal.	5829 03	17 50
	2,	To dep.	3000 00	8 08
	22,		4060 28	100 00
	22,		17000 00	958 54
	22,		9844 45	1164 75
				107 06
				3 00
				12 25
				100 80
				6 50
				3 00
				40 00
				24 00
				78 00
				47 00
				500 00
				1407 92
				40 00
				138 00
				36 00
				1015 19
				10 50
				4 80
				25 00
				228 35
				21 74

	6 73
	94 00
	9 00
	74 26
	4 95
	120 86
	15 30
	1 35
	219 97
	40 08
	3 75
	117 00
	29 65
	25 31
	11 06
	339 00
	272 42
	64 00
	614 00
	1546 30
	766 56
	18 30
	577 46
	350 00
	1000 00
	150 00
	891 00
	84 34
Bal.	26189 13
39,733 76	39,733 76

1889

Dr.		Cr.	
Oct. 29, Bal.	26189 13	Ck.	45 70
Nov. 5, To dep.,	6500 00		200 00
			44 16
			100 00
			275 00
			600 00
			19 44
			110 08

. .	40 00
. .	235 26
. .	38 43
. .	123 37
. .	453 54
. .	20 40
. .	31 00
Bal. .	30805 29
	32,689 13
Nov. 29, Bal. .	30,805 29

PETITION FOR APPEAL.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al. } No. 150.

In re. Intervening Petition of Anniston Loan and Trust Company
vs.
Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, Trustee, and James C. Neely, Turstee.

To the Honorable Judges of said Court:

Your petitioners, Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, trustee, and James C. Neely, trustee, represent that in the final decree of this court, rendered against petitioners as set forth in the proceedings in said cause, which final decree was entered on the 22d day of December, 1892, by the Honorable A. P. McCormick, circuit court judge in the fifth circuit, upon exceptions to the report of the special master in the intervention of said Anniston Loan and Trust Company in said above stated cause, there is manifest error committed in said decree to the injury of your petitioners.

Wherefore, petitioners pray an order granting an appeal from said decree to the United States circuit court of appeals for the fifth circuit; and petitioners file herewith their bond with security in the penal sum of twenty-five hundred dollars, which bond is approved by the Honorable A. P. McCormick, one of the judges of said court.

Petitioners further pray that supersedeas may be granted by order of this court until the final determination of said appeal in the United States circuit court of appeals for the fifth circuit.

Dated this 3d day of February, 1893.

HENRY B. TOMPKINS,
Solicitor for Petitioners.

February 3, 1893. Allowed by A. P. MCCORMICK,
Circuit Judge.

Endorsed: Filed in clerk's office Feby. 8, 1893.
N. W. TRIMBLE, Clerk.

ASSIGNMENT OF ERRORS.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al. } No. 150.

In re. Intervening Petition of Anniston Loan and Trust Company
vs.
Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, Trustee, and James C. Neely, Trustee.

In this cause, being an appeal from the final decree of the circuit court of the United States for the northern district of Alabama, northern division, at Huntsville, overruling and setting aside the report of Milton Humes, Esq., special master, in the case wherein Anniston Loan and Trust Company was the intervening petitioner against the Alabama Iron and Rail-

way Company, Townley Coal and Coke Company, Napoleon Hill, trustee, and James C. Neely, trustee, claiming title to property heretofore held and owned by the Sheffield and Birmingham Coal, Iron and Railway Company.

And it appearing that besides the decree of said court so overruling the finding of said special master, a judgment and decree was entered against said petitioners in favor of the said Anniston Loan and Trust Company for twenty-five thousand dollars, besides interest and costs.

Now comes the appellants, to-wit, Alabama Iron and Railway Company, Townley Coai and Coke Company, Napoleon Hill, trustee, and James C. Neely trustee, and say that in the record and proceedings in the above entitled cause there is manifest error to their injury, and for cause thereof they assign the following grounds:

1. The court erred in overruling and setting aside the finding and report of said special master, Milton Humes, Esq.

2. The court erred in not sustaining and confirming said report of special master, Milton Humes, and dismissing the intervening petition of Anniston Loan and Trust Company.

3. The court erred in finding that the twenty-five thousand dollars of receiver's certificates alleged to have been purchased and to have become the property of the Anniston Loan and Trust Company, was a valid claim and charge against the property and assets of the Sheffield and Birmingham Coal, Iron and Railway Company, which property and assets were afterwards sold and deeded to petitioners—the appellants herein.

4. The court erred in finding and decreeing that the former receiver in said cause, and the petitioners herein, were and are estopped from setting up the invalidity of said $25,000 of receiver's certificates.

5. The court erred in finding and decreeing that the Anniston Loan and Trust Company were and are bona fide purchasers and holders of said $25,000 of receiver's certificates, the subject matter of this litigation.

6. The court erred in finding and decreeing that if anything should be paid on said $25,000 of receiver's certificates that they should be paid the full face par value thereof, with interest thereon, in view of the fact disclosed by the pleadings

and testimony that the certificates were sold by Charles D. Woodson for seventy cents on the dollar.

7. The court erred in finding and decreeing that said certificates had ever been legally disposed of, or that any title thereto had ever been acquired by said Anniston Loan and Trust Oompany, or those from whom they claim title, as against the receiver or the purchasers of the property of the Sheffield and Birmingham Coal, Iron and Railway Company, the petitioners and appellants herein.

8. The court erred in finding and decreeing that the fifteenth exception to the report of the special master, Milton Humes, was valid.

9. The court erred in not finding and decreeing in each and every separate instance hereinbefore objected to, the contrary of what the court did find and decree; and in not overruling and disallowing the claims of said intervenor, Anniston Loan and Trust Company.

HENRY B. TOMPKINS,
Sol. for Petitioners.

Endorsed: Filed in clerk's office Feby. 8, 1893.
N. W. TRIMBLE, Clerk.

GRANT OF APPEAL.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al. } No. 150.

In re. Intervening Petition of Anniston Loan and Trust Company
vs.
Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, Trustee, and James C. Neely, Trustee.

In this cause, Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, trustee, and James G. Neely, trustee, appellants, having made their appli-

cation in writing for appeal from the final decree of the circuit court of the United States for the northern district of Alabama, northern division, setting aside and overruling the report of the Special Master, Milton Humes, Esq., in said cause, wherein Anniston Loan and Trust Company were intervenors, and sustaining the exceptions therein filed by said Anniston Loan and Trust Company in respect of the validity and lien of certain receiver's certificates amounting in the aggregate to twenty-five thousand dollars, besides interest and costs, in favor of said Anniston Loan and Trust Company, as set forth and shown by the record; and the said appellants accompanying their application with bond in the sum of twenty-five hundred dollars, which sum is hereby fixed as the amount of the penalty of the bond for supersedeas of said decree; and it appearing to the satisfaction of the court that the said property formerly comprising the property, rights and assets of the Sheffield and Birmingham Coal, Iron and Railway Company, and now belonging to the appellants in this cause, is almost entirely real estate situated in the northern district of Alabama, and by former orders and decrees of this court answerable, for and chargeable with the said receiver's certificates, if the same are declared to be valid and binding, and that said property so situated in the northern district of Alabama is in value greatly in excess of said $25,000 of receiver's certificates with any interest, costs and expenses that could accrue thereon; and it further appearing to the satisfaction of the court that the said bond and security therefor is good and sufficient when approved by a judge of this court:

It is therefore ordered, adjudged and decreed, that the said application for appeal be, and the same is hereby granted, and that the same, together with said bond, be filed in the circuit court of the United States for the northern district of Alabama, at Huntsville, and made returnable not exceeding thirty days from this date (unless the time should hereafter be extended in accordance with law), and the clerk of this court is hereby ordered to stay all proceedings, advertisements and other matters in execution of said final decree until the final determination of said appeal.

Dated this 3rd day of February, 1893.

A. P. McCormick, Circuit Judge.

Endorsed: Filed in clerk's office February 8, 1893.
N. W. TRIMBLE, Clerk.

BOND OF APPELLANTS.

In the Circuit Court of the United States for the Northern District of of Alabama, Northern Division.
In Equity. No. 150.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al.

In re. Intervening Petition of Anniston Loan and Trust Company,
vs.
Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, Trustee, and James C. Neely, Trustee.
United States of America.

Know all men by these presents, that we, Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, trustee, and James C. Neely, trustee, as principals, and Henry B. Tompkins, as surety, are held and firmly bound unto N. W. Trimble, clerk of the circuit court of the United States for the northern district of Alabama, northern division, in the full and just sum of twenty-five hundred dollars, to be paid to said N.W. Trimble, his certain attorneys, executors, administrators or assigns, for and on account of the Anniston Loan and Trust Company, the intervenor in the above stated cause; to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this second day of February, 1893.

Whereas, lately, at a term of the circuit court of the United States for the northern district of Alabama, northern division, in equity, in a suit pending in said court wherein Central Trust Company of New York was complainant, and Sheffield and Birmingham, Coal, Iron and Railway Company and oth-

ers, were defendants, and Anniston Loan and Trust Company was an intervenor for the purpose of establishing a lien on certain receirver's certificates, besides interest and costs, against the property, rights and assets formerly owned by the Sheffield and Birmingham Coal, Iron and Railway Company, and now belonging to petitioners, the appellants in this cause; and

Whereas, in said suit a decree was rendered by said court in favor of said intervenor, Anniston Loan and Trust Company; and

Whereas, said Alabama Iron and Railway Co. and others, petitioning appellants, having taken an appeal to the United States Circuit Court of Appeals for the fifth circuit to reverse said final decree rendered in said above entitled cause, and entered on the 22d day of December, 1892, as is fully set forth and shown in the records; and

Whereas, said Alabama Iron and Railway Company and others, the appellants, having obtained an order granting an appeal and supersedeas of said decree so rendered in favor of said Anniston Loan and Trust Company, and filed the same in the clerk's office of said court, to reverse the said decree in the aforesaid suit, and citation directed to said Anniston Loan and Trust Company, as directed by the court, was issued citing it to be and appear at a United States circuit court of appeals for the fifth circuit, to be holden in the city of New Orleans on the third Monday of November, 1892, or so soon thereafter as required by the statutes and rules of court.

Now, the condition of the above obligation is such that if said Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, trustee, and James C. Neely, trustee, shall prosecute the said appeal to effect and shall answer all damages and costs if they fail to make said appeal and plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

ALABAMA IRON AND RAILWAY CO. (L. S.)
TOWNLEY COAL AND COKE CO. (L. S.)
NAPOLEON HILL, Trustee. (L. S.)
J. C. NEELY, Trustee. (L. S.)
By Henry B. Tompkins, Sol.
HENRY B. TOMPKINS, Surety. (L. S.)

Approved February 3d, 1893.

By A. P. McCORMICK,
Circuit Judge.

United States of America,
Eastern District of Louisiana.

Before me, the undersigned, personally came Henry B. Tompkins, of the city of Atlanta, in State of Georgia, who, on oath, says that he is worth the sum of five thousand dollars, over and above all his just debts or demands against him, in real estate situated in the States of Georgia and Alabama. This affidavit made to qualify as surety on the bond of appellants in the case wherein Alabama Iron and Railway Company et al. are appellants, and appealed from the U. S. Circuit Court for the Northern District of Ala. N. Div.

HENRY B. TOMPKINS.

Sworn to and subscribed before me this 3d February, 1893.
(Seal) JAMES M. McKEE,
U. S. Commissioner Eastern Dist. of Louisiana.

Endorsed: Filed in clerk's office February 8, 1893.
N. W. TRIMBLE, Clerk.

CITATION.

In the Circuit Court of the United States for the Northern District of Alabama, Northern Division. In Equity.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company et al. } No. 150.

In re. Intervening Petition of Anniston Loan and Trust Company

vs.

Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, Trustee, and James C. Neely, Trustee.

The United States of America to Anniston Loan and Trust Company, Greeting:

You are hereby cited and admonished to be and appear at

a United States Circuit Court of Appeals for the fifth circuit, to be holden at New Orleans 30 days after the service of this citation, at the term of the court begun on the third Monday of November, 1892, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Alabama, northern division, in equity, wherein Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, trustee, and James C. Neely, are appellants, and you, Anniston Loan and Trust Company, are appellee, to show cause, if any there be, why the final decree rendered in favor of said appellee, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 3rd day of February, in the year of out Lord one thousand eight hundred and ninety-three.

A. P. McCormick,
Circuit Judge.

In the Circuit Court of the United States for the Northern District and Division of Alabama.
In Equity. At Huntsville.

Central Trust Company of New York
vs.
Sheffield and Birmingham Coal, Iron and Railway Company, and another. } No. 150.

In re. Intervention of Anniston Loan and Trust Company.
Appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

By Alabama Iron and Railway Company, Townley Coal and Coke Company, Napoleon Hill, Trustee, and James C. Neely, Trustee, Appellants,

vs.

Anniston Loan and Trust Company, Appellee.

In the above stated cause we, the undersigned solicitors for the Anniston Loan and Trust Company, hereby acknowledge to have received service of the original citation made and signed by the Hon. A. P. McCormick, circuit judge, on the 3d

day of February, 1893, and agree that this shall be taken as an acknowledgement of service made upon such original citation, hereby waiving all other and further notice of said appeal, which was granted on the 3d day of February, 1893.

This 22d day of February, 1893.

(Signed.) KNOX & BOWIE,
Solicitors for A. L. & T. Co., Appellees.

United States of America,
Northern District of Alabama, Northern Division.

I, N. W. Trimble, clerk of the circuit court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full and complete copy of proceedings had decrees rendered, reports of special masters, depositions, and exhibits thereto, except such as are by consent and agreement of counsel omitted, in case of Central Trust Company of New York vs. Sheffield and Birmingham Coal, Iron and Railway Company and another, in re. intervention of Anniston Loan and Trust Company, as fully as the same appears of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this fourth day of March, 1893.

(Seal of U. S. Court.) N. W. TRIMBLE,
Clerk of the U. S. Court, Nor. Dist. Nor. Div. of Alabama.

1033

IN THE

Supreme Court of the United States.

No. —. Original.

CERTIORARI TO U. S. CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

EX PARTE: IN THE MATTER OF ALABAMA IRON AND RAILWAY CO., TOWNLEY COAL AND COKE CO., NAPOLEON HILL, TRUSTEE, AND J. C. NEELY, TRUSTEE.

ANNISTON LOAN AND TRUST CO., RESPONDENT.

In the matter of the foregoing application for a writ of certiorari in said above-entitled cause to the United States circuit court of appeals it is agreed between Henry B. Tompkins, counsel for and representing all the petitioners in making application for said writ, and John B. Knox, counsel for the Anniston Loan and Trust Company, the respondent opposing the granting of said writ, as follows:

1st. For the purposes of this case it is agreed that the printed copy of the record filed in the clerk's office of the United States circuit court of appeals for the fifth circuit and certified by the clerk of the United States circuit court for the northern district of Alabama is a correct transcript

of the record on which the cause was submitted and heard in that court, except that, in addition to the evidence offered by respondent as set forth in said record, respondent offered a certified transcript of a deed from Henry B. Tompkins to Charles D. Woodson, a copy of which said deed is set forth on pages 43, 44, and 45, inclusive, of the printed Record; and also a certified transcript from the record of deeds in Jefferson county, Alabama, of the mortgage from Charles D. Woodson to Jacob G. Chamberlain, receiver, a copy of which appears in the printed Record on pages 59, 60, and 61, inclusive; but the endorsement purporting to have been made by Charles D. Woodson on the 27th of November, 1889, reciting that the property described therein was subject to a vendor's lien does not appear upon the mortgage as recorded and which was offered in evidence by respondent. It is agreed that the aforesaid printed transcript as supplemented by this agreement may be used in this court without having the same reprinted.

2d. It is agreed that a copy of the decision of the said circuit court of appeals rendered in the said case of The Alabama Iron and Railroad Company *et al. versus* The Anniston Loan and Trust Company, appellee, at the November term, 1892, and which is attested by the clerk of that court as a true copy, may be filed and used in this court for the purpose of making said application for said writ of certiorari and to be printed for use in this cause upon said application.

3d. It is further agreed between counsel aforesaid that counsel for respondent accepts service of notice of said application for said writ of certiorari and consents that application may be made before the Supreme Court of the United States on Monday, October the 9th, 1893, or on such other day as said court may determine to hear the same, but nothing herein shall be construed to deprive counsel for respondent

of the right of resisting the granting of said writ of certiorari or as an admission on respondent's part that the case is one in which the writ ought to be granted.

HENRY B. TOMPKINS,
Counsel for Alabama Iron and Railway Co. et al.
JOHN B. KNOX,
Counsel for Respondent.

7TH OCT., 1893.

1033.

1033

United States Circuit Court of Appeals.

FIFTH CIRCUIT.

NOVEMBER TERM, 1892.

No. 126.

ALABAMA IRON AND RAILWAY COMPANY, TOWNLEY COAL AND COKE COMPANY, NAPOLEON HILL, TRUSTEE, AND JAMES C. NEELY, TRUSTEE, APPELLANTS,

vs.

ANNISTON LOAN AND TRUST COMPANY, APPELLEE.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

Before Locke and Billings, District Judges.

On the 15th day of August, 1890, the Anniston Loan and Trust Company filed its intervening petition claiming payment for five separate receiver's certificates, numbered 8, 9, 10, 11, and 12, issued on the 10th day of October, 1889, by Jacob G. Chamberlain, late receiver of the Sheffield and Birmingham Coal, Iron and Railway Company. The intervention set forth that the receiver placed said certificates in

the hands of Chas. D. Woodson for sale; that the said Woodson on the 10th of October, 1889, sold the same to one Duncan T. Parker, now deceased, for $5,000 for each certificate; that the said Parker paid Woodson said price for the certificates, the same having been placed in Woodson's hands by the receiver to be negotiated and sold by Woodson, with only power and authority to act for and represent said receiver in the matter of the sale of said certificates.

That on the 2d of November, 1889, Duncan T. Parker sold and delivered the certificates for the sum of $5,000 each to the petitioner, Anniston Loan and Trust Company.

Said petition further sets forth that it was the duty of Chamberlain to pay the semi-annual interest on said certificates, being $750, due on the 10th of April, 1890, at the National Park Bank of New York, and that said interest was not paid.

It is further stated in said petition that said receiver duly reported the sale of said certificates, as made by said Chas. D. Woodson, such report being made to the circuit court of the United States, and that said proceeds had been placed by Woodson to the credit of said receiver in the First National Bank of Sheffield, less six per cent. commission for selling the same.

That on the 3d day of December, 1889, a decree was rendered by said circuit court of the United States foreclosing the mortgages and ordering a sale of the property in said original suit and that the purchasers be required to pay the receiver's certificates, numbered as aforesaid, owned and held by petitioner.

That on the 4th of January, 1890, the said circuit court made an order modifying the former decree of the 3d of December, 1889, authorizing such purchasers of said properties at the foreclosure sale to contest the validity of said certificates so sold by Woodson, and the said modified decree was made after Parker had purchased said certificates from the duly

authorized agent of said receiver, in good faith, for a valuable consideration, and had sold them to petitioner.

That on the 21st of April, 1890, said property was sold under said decree and part of the same purchased by Napoleon Hill, trustee, and part by James C. Neely, trustee.

Petitioner then prays for relief that the amount of said certificates be paid to it by the purchaser of said property.

To this a demurrer was interposed, and on the 12th of November, 1890, petitioner amended its intervention, setting forth more specifically the authority given to said Jacob G. Chamberlain, receiver, to issue said receiver's certificates, and stating that the action of Woodson was as the authorized agent of the receiver in selling said five certificates, and reiterating in a great measure what had already been set forth in the original petition.

On the 2d of December, 1890, respondents renewed their demurrer to the petition and amended petition, which was overruled.

On the 31st of January, 1891, respondents filed their answers to the intervention of Anniston Loan and Trust Co. substantially as follows:

They deny that said Chamberlain, receiver, ever engaged Woodson, the president of the First National Bank of Sheffield, Alabama, to act as his agent in the negotiation and sale of said receiver's certificates,

And allege that Woodson disposed of the same without warrant or authority from Chamberlain, receiver, and contrary to the direct instructions and request of said receiver; that said certificates were not disposed of by Woodson, as alleged in the intervention, on the 10th of October, 1889, to one Duncan T. Parker or any one else, nor were they disposed of for the sum of $5,000 each; and respondents aver that said five certificates were not disposed of by Woodson until after the 13th of October, 1889, and that they were then sold or otherwise disposed of by Woodson, without authority

and against the express instructions of the receiver, to some person or persons unknown to respondents and for a price not greater than seventy-five cents on the dollar; and also call for strict proof that said Duncan T. Parker or any one in his behalf ever paid to Charles D. Woodson $5,000 for each of said certificates; and respondents aver that if the said Parker ever bought the certificates at all from said Woodson they were bought for a less sum than they were directed by the court to be sold for, and that the purchase of the same was against the order of the court and against the instructions of the receiver. They further allege that the price paid for said certificates by said Parker, whatever the price may have been, was never turned over or transferred by Parker, or any one for him, to said Woodson nor to said Chamberlain as receiver.

They aver that they were not informed as to what said Parker may have done with said certificates, but deny that Parker sold and transferred said certificates to the intervenor for $5,000 each.

They also deny that it was the duty of Chamberlain to pay the interest upon said certificates or that said Chamberlain reported the sale of said certificates, Nos. 1, 2, and 3, and also Nos. 8, 9, 10, 11, and 12, for him by said Woodson, or that the proceeds were placed to his credit in the First National Bank of Sheffield. Respondents admit, however, that said Chamberlain did report to the court that the proceeds of the five certificates in litigation had been placed by Woodson to the receiver's credit in the First National Bank of Sheffield, less commission for selling same; but respondents aver and show to the court that such statement made by said receiver was made through misinformation and brought about by misrepresentation and misconduct of said Woodson, and that said receiver proceeded to correct said statement in said report as soon as he became aware of the error into which he had been led.

Respondents admit that a decree had been taken on the

3d of December, 1889, as alleged in the intervention, and that it was ordered in said decree that the purchaser of the property should pay for said certificates in addition to the amount bid at the sale of the property; and they further admit the court did on the 4th day of January, 1890, make another decree modifying and changing the one of December 3, 1889, so as to authorize the purchaser of the property to test the validity of the said five certificates, but deny that Woodson was the agent for the receiver or that his sale of the said certificates was binding upon the purchaser of the property. They also admit the sale of the mortgaged property on the 21st of April, 1890, under the decree as modified, authorizing the purchaser of the property to contest the validity of the five certificates.

In answer to the amended petition substantially the same admissions and denials were made as in the answers to the original petition of intervenor.

On the 6th of March, 1891, an order was entered, by consent, referring the cause to a special master, who on the 3d of August, 1892, filed an extended report upon matters of fact, in substance finding as follows:

That Chamberlain, the receiver, by an order of the court, duly and regularly made, issued receiver's certificates for an amount in the aggregate of $150,000. Of these certificates five, for five thousand dollars each—Nos. 8, 9, 10, 11, and 12, inclusive—the receiver placed in the hands of C. D. Woodson, who was at the time president of the First National Bank of Sheffield, to sell; that these five certificates are the subject of controversy in this suit, and the receiver was authorized and empowered to sell them at not less than par, less a reasonable amount to be paid for the negotiation of the same, and the proceeds to be applied to the purposes named in the decree.

On October 13, 1889, Chamberlain, the receiver, sent a telegram from Atlanta, Ga., to Woodson, at the Fifth Avenue hotel, New York, in the following language:

"Do not place receiver's certificates under any circumstances, as I have given option for their sale. Also return acceptance of ten thousand dollars to me at Sheffield at once. Answer here.

"J. G. CHAMBERLAIN."

On the same day Woodson replied to this telegram as follows:

"Telegram received. Will return you the papers as requested.

"C. D. WOODSON."

In violation of the instructions contained in this telegram to him, Woodson on October 14, 1889, sold in New York these five certificates to H. E. Garth for D. T. Parker—said Garth in his testimony says, "Either for $17,000 or 70 cents on the dollar;" and D. T. Parker on the 21st and 22d of October, 1889, sold them to O. H. Parker, president of the Anniston Loan and Trust Company, for said company for $22,500, being 90 cents on the dollar; that D. T. Parker purchased from Woodson and paid him for the certificates after the receipt by Woodson of the telegram from the receiver to Woodson directing him not to dispose of the certificates and in effect countermanding any authority which might previously have been given him to sell the certificates, but that Parker purchased and paid for the certificates in perfect good faith, relying upon Woodson's reputation for probity and honor. D. T. Parker, it appears, is dead, and also Woodson.

The testimony of Garth as to the sale by Woodson to Parker is:

"I have been engaged in the banking business for many years, and am now president of the Mechanics' National bank of this city. I knew C. D. Woodson and D. T. Parker. I purchased of Mr. Woodson three certificates of the Sheffield and Birmingham Coal, Iron and Railway Company of $5,000 each, Nos. 1, 2, and 3, and shortly afterwards bought for Mr. D. T. Parker five certificates of $5,000 each from

Mr. Woodson. As well as I can remember, they were Nos. 8, 9, 10, 11, and 12. Mr. Woodson called at my office with Nos. 1, 2, and 3, and I bought them, paying him 80 cents on the dollar for them, and in about two or three weeks afterwards he called to see me again, and I bought the five for Mr. D. T. Parker at his (Parker's) request. I believe their numbers were 8, 9, 10, 11, and 12. I paid Mr. Woodson either 70 cents on the dollar or $17,000 for the five certificates of $5,000 each.

"Mr. Woodson told me that the receiver of the Sheffield and Birmingham Coal, Iron and Railway Company owed his bank and gave the certificates to him to sell. I do not know what capacity he was acting in further than that I knew he was president of the First National Bank of Sheffield, and that he had stated that the receiver was indebted to his bank.

"I sold the certificates Nos. 1, 2, and 3 that I bought. Those bought for Mr. Parker were handed to him. So far as I know, the legality of the purchase of certificates Nos. 1, 2, and 3 has never been doubted or questioned.

"I have already stated the price and about the time when the certificates were purchased. As nearly as I can remember, the first were bought the last of September and the others the middle of October, 1889. So far as I know, the interest on Nos. 1, 2, and 3 has been paid regularly. I never heard to the contrary.

"I cannot say how long I knew Mr. Woodson before the purchase of the certificates; probably a year. He was engaged in the banking business. I heard that he had been in the banking business a number of years in Atlanta, Ga., and Sheffield, Ala. I cannot say what his standing was in banking and financial circles in the city of New York. He informed me that his bank was hard up, but was perfectly good. So far as I know, everybody regarded him as thoroughly honest and reliable."

The evidence shows that the certificates were regularly sold to the Anniston Loan and Trust Company at 90 cents, and that they still own them. The first notice they had of any question as to them was when they were presented at the bank when interest was payable.

It is thus shown that the intervenor is a *bona fide* holder

that Woodson was its president, and that although the credit was given, part on October 22 ($17,000) and balance ($6,500) November 9, yet at no time after the date of either credit was the bank in a condition to have paid any considerable portion of either.

These were the findings of fact by the master, but as matters of law he found that the receiver was by his conduct, so far as he was concerned, estopped from denying the validity of the disposition of these certificates by Woodson, but that the entries and deposits in the bank were not equivalent to a payment by Woodson to the receiver, and that the intervenor's claim was, therefore, not a valid claim and should be disallowed.

To this report the intervenor filed exceptions, specifying under fifteen heads alleged improper rulings. Upon this the case came on, and being fully heard the exceptions were sustained, the decision of the special master set aside, and judgment given for the intervenor for the full amount of the certificates, with interest. Whereupon appellants took an appeal, assigning as error that the court erred in overruling and setting aside the special master's finding and report and in finding that the five certificates constituted a valid claim and charge against the property and in giving judgment for intervenor.

Locke, judge, delivered the opinion of the court.

The nine grounds of exception assigned upon examination resolve themselves into but three principal questions that require examination: Was the Anniston Loan and Trust Company a *bona fide* holder of the $25,000 of receiver's certificates, the subject-matter of this litigation? Had they been legally disposed of so that any title had been acquired by said company, and was the receiver and appellants estopped from setting up the invalidity of said certificates?

The first question is without hesitation answered in the affirmative.

In our view of the other two questions we deem it unnec-

essary to examine separately each of the grounds, as the determination of the one question, whether or not the certificates were a valid claim against the property, must include all reasons for such conclusion.

Nor do we consider it necessary to examine and review the minutiæ of the peculiar circumstances of the delivery and sale of the certificates, or whether or not the testimony which was introduced to show the revocation of the power given to Woodson to sell and which was objected to and argued at length was admissible. It is conceded by the report of the master, in which view we agree, that, as far as the action of the receiver could do it, the sale was ratified by him, and the only question remaining is whether the proceeds ever so came into the hands of the receiver as to justify the court in recognizing the sale and confirming the validity of the lien given by the certificates.

The principle of law that, in order to hold the body of the trust liable for the receiver's certificates, the proceeds must come to the hands, custody, or control of the receiver is not questioned by either party, and it is conceded that the receiver acted in perfect good faith in accepting a credit with the bank and protecting himself and such deposit as far as possible by taking securities, and that he is estopped from repudiating the sale and denying the receipt of the proceeds.

The sale was not repudiated by the receiver upon his learning of it, nor does it appear that he made demand for the money as money when informed that the proceeds had been placed to his credit in the bank where he had been doing his banking business for a long time to the extent of many thousand dollars and where he still made deposits of large amounts and continued drawing checks for several weeks.

The embarrassment of the receiver and the ground of claim on the part of the purchasers, so far as they have any,

arise from the failure of the bank and not from any insufficiency of deposit of proceeds. The funds were received by him precisely as they are received by the banks at the clearing-house and precisely as they are received by one depositor who is paid by the check of another depositor—that is, the receipt of the amount appropriated and placed to his credit by the bank, with his acceptance and acknowledgment. Had he received a check upon the said bank, duly certified by the cashier, and had the same placed to his credit, could it have been considered more a valid payment?

Levy *vs.* The Bank of the United States, 4 Dall., 234.

The amount to his credit from the sale of the certificates was in his possession and control the same as the amount he had deposited since the sale. It is true that subsequently, when he learned that there might be a question of the solvency of the bank, he demanded and obtained from the president of the bank personal notes, mortgages, and collateral securities to secure his deposits.

But this, in our opinion, so far from tending to invalidate the sale of the certificates, was a fresh and conclusive ratification of the sale and of the acceptance of the deposit of the proceeds.

The giving of notes, secured by mortgage or collaterals, by a bank to protect a deposit is no evidence that there has not been a money transaction or valid credits received.

Is the court bound to recognize the estoppel of its agent and protect the parties who have been from the force of events subsequent to their transaction and unforeseen by them forced into the position occupied by the petitioners herein?

The learned judge in the court below considered that it is, and with this view the peculiar circumstances of the case induce us to agree.

This sale had been recognized and treated as valid and binding by both the receiver and the court until it was too late for the purchasers to protect themselves from loss.

Koontz *vs.* Northern Bank, 16 Wall., 196.
Oddie *vs.* The National Bank, 45 N. Y., 735.
National Bank *vs.* Burkhardt, 100 U. S., 686.

From the 5th of November, when the last credit of $6,500 was given to Chamberlain on the books of the bank, until the 4th of January neither the validity of the sale nor the integrity of the receipt of the proceeds was questioned. The receiver continued drawing checks against the fund thus accumulated, and the decree was drawn, presented, and signed, recognizing all as valid.

The report of the sale and deposit of proceeds made to the court, the drawing, presenting, and consent to signing of the decree of foreclosure, in which the validity of these certificates was plainly and distinctly recognized, were all done with full knowledge and understanding of the circumstances subsequently set up.

The appellants herein purchased the property, subject to any liens which might be held to be valid on account of the existence of these outstanding certificates, of which they had full knowledge, and they now hold by assignment or by buying in at foreclosure sales in suits brought by themselves the securities, which were considered when taken abundantly ample to protect the deposits. Under these circumstances to permit them to successfully contest their payment and cast the burden of any possible loss upon the innocent purchasers, who had not been informed of any error or mistake of theirs until too late to protect themselves, would, it seems to us, as expressed in the emphatic language of the learned judge in the court below, "bring

discredit on the temple." We fail to find any error in the action of the circuit court, and the judgment is affirmed with costs.

A true copy.

Attest:

[SEAL.] J. M. McKEE, *Clerk.*

[Endorsed:] U. S. circuit C. of appeals, 5th circuit. Opinion of court in Anniston Loan and Tr. Co. case.

1033.

SUPREME COURT OF THE UNITED STA

October Term, 1893.

Ex-parte: In the Matter of

ALABAMA IRON & RAILWAY COMPANY,
TOWNLEY COAL & COKE COMPANY,
NAPOLEON HILL, TRUSTEE, AND
J. C. NEELY, TRUSTEE,
Petitioners.

Petition for a Writ of Certiorari to the United States Ci
Court of Appeals, for the Fifth Circuit.

HENRY B. TOMPKINS,
Of Counsel for Petitio

ALABAMA IRON AND RAILWAY COMPANY;
TOWNLEY COAL AND COKE COMPANY;
NAPOLEON HILL, TRUSTEE, AND
JAMES C. NEELY, TRUSTEE,
against
THE ANNISTON LOAN AND TRUST COMPANY

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition for Certiorari of Alabama Iron and Railway Company; Townley Coal and Coke Company; Napoleon Hill, Trustee, and James C. Neely, Trustee, respectfully sets forth and shows:

1. That on the 26th day of June, 1890, there was pending in the Circuit Court of the United States for the Northern District of Alabama, Northern Division, the cause of Central Trust Company of New York against Sheffield and Birmingham Coal, Iron and Railway Company and another, which was a suit to foreclose a mortgage.

2. That on said 26th day of June, 1890, the Anniston Loan and Trust Company, a corporation of the State of Alabama, filed its intervention in said cause, claiming payment for five certain receiver's certificates of $5,000 each, which

had been issued by Jacob G. Chamberlain, receiver of said Sheffield and Birmingham Coal, Iron and Railway Company.

3. That demurrers and answers were filed to the said intervention of Anniston Loan and Trust Company by the various parties in interest, and that the same having been referred to a Master in Chancery; after the taking of a large amount of testimony the said Master in Chancery, Milton Humes, Esq., did on the 3d day of August, 1892, report against the claim of the said Anniston Loan and Trust Company to be paid any part of the said five receiver's certificates, amounting in the aggregate to $25,000; with interest and costs. The finding of said master being found on pages 73 *et sequitur* of the certified printed transcript of the record filed herewith.

4. That to said finding of said Master in Chancery the said Anniston Loan and Trust Company filed exceptions, and the same afterwards came on to be heard before the Honorable A. P. McCormick, one of the judges of the Circuit Court of the United States for the Fifth Circuit; and the said judge thereupon found in favor of the said Anniston Loan and Trust Company, and against the report of said Master in Chancery, and gave a decree against your petitioners herein, who at that time and now are the legal representatives of the said Sheffield and Birmingham Coal, Iron and Railway Company, and in possession, control and ownership of the properties upon which it is alleged said certificates were and are a lien.

5. From said decree of the said Circuit Judge petitioners appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and this cause came on to be heard before the Honorable James W. Locke, District Judge of the United States for the Southern District of Florida, and the

Honorable Edward C. Billings, District Judge of the United States for the Eastern District of Louisiana, sitting as judges in the United States Circuit Court of Appeals; the Honorable Don A. Pardee and the Honorable A. P. McCormick, Circuit Judges, both being disqualified; as was also the Honorable Harry T. Toulmin, United States District Judge for the Southern District of Alabama, who was present but took no part in the hearing of said cause when the same was heard before said District Judges, the Honorable James W. Locke and Edward C. Billings.

6. Your petitioners further show that said cause came on for hearing before said United States Circuit Court of Appeals on the 31st day of May, 1893, and the same was argued. And that afterwards, on the 20th day of June, 1893, the said two District Judges, sitting as a Circuit Court of Appeals, delivered an opinion in all respects confirming and sustaining said opinion of the Honorable A. P. McCormick, Circuit Judge.

7. Your petitioners further set forth and show that in the case there were involved intricate and material questions affecting the issue and negotiation of receiver's certificates and liability thereon when the same had been sold without authority of the receiver, and when the proceeds of such certificates had never been paid over to the receiver; and that, as they are informed by counsel, said Circuit Court of Appeals has committed manifest error to the damage of petitioners.

8. Petitioners further set forth and show to the court that the questions involved in said case are conceived to be novel and of large importance to the general commercial interests of the country, and such as should receive consideration and

decision at the hands of the Supreme Court of the United States.

9. Petitioners herewith present to the Court, and annex a certified copy of the transcript of record used before the Circuit Court of Appeals; together with a duly certified copy of the opinion of said Judges, James W. Locke and Edward C. Billings, sitting as said United States Circuit Court of Appeals.

10. Petitioners further show that they applied to the Honorable Howell E. Jackson, Associate Justice, for a writ of certiorari in this cause in vacation on the 27th day of June, 1893, and that said Justice endorsed on said application the following:

"The foregoing application for writ of certiorari being presented to me, and being of opinion that the writ cannot be granted by a Justice of the United States Court in vacation, but only by the Court, I have suggested to counsel representing the petitioners, that he apply to the United States Circuit Court of Appeals for the Fifth Circuit, if in session, and ask a stay of the judgment and postponement of advertisement of sale until the application for the writ of certiorari can be presented to the Supreme Court in October next.

"In my opinion the case is one in which the certiorari should be allowed.

(Signed) "HOWELL E. JACKSON, Circuit Justice."

Petitioners then presented a petition for rehearing to the Circuit Court of Appeals for the Fifth Circuit, and obtained a stay as suggested by Mr. Justice Jackson.

Wherefore, petitioners pray that the writ of certiorari may be granted requiring and directing the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit to certify and send up to this Honorable Court a complete

transcript of the record in the said cause, and also the opinion delivered on the 20th day of June, 1893, finding in favor of said Anniston Loan & Trust Company.

And petitioners now aver that they are ready to enter into any such bond as this Court may require to supersede said judgment in favor of said Anniston Loan & Trust Company until the final hearing of said cause in the Supreme Court of the United States. But petitioner avers that the property subject to the lien of the said certificates, if the same shall finally be established as valid and binding, is real estate consisting of coal lands, coal mines, three iron blast furnaces and railroad tracks of very large value and greatly in excess of said judgment of said Anniston Loan & Trust Company.

And petitioners pray that the Court will order supesedeas of said judgment upon such terms as may be reasonable and just, and will make such further orders and judgments in respect of granting of this certiorari as shall be equitable and proper.

HENRY B. TOMPKINS,
Solicitor for Petitioners.

State of Tennessee, }
Davidson County. }

A. W. Wills being duly sworn according to law, on his oath says:

I am president of one of the petitioners, Alabama Iron & Railway Company; and that the matters and things set forth in the foregoing petition, wherein Alabama Iron & Railway Company, Townley Coal & Coke Company, J. C. Neely, trustee, and Napoleon Hill, trustee, are petitioners, so far as they are stated, of my own knowledge are true; and so far as they are stated upon information and belief, I believe them to be true.

A. W. WILLS, Pres.

Sworn to and subscribed before me this fifteenth day of September, 1893.

E. R. CAMPBELL,
Clerk U. S. District Court.

[Seal.]

Endorsed:

"Supreme Court of United States. Alabama Iron & Railway Co., Townley Coal & Coke Co., Napoleon Hill, Trustee, and J. C. Neely, Trustee, v. Anniston Loan & Trust Company. Petition for Certiorari, and Affidavit.

HENRY B. TOMPKINS,
Atlanta, Ga.,
Solicitor for Petitioners.

In the United States Circuit [illegible]

For the Fifth Circuit. [illegible]

No. [illegible]

CENTRAL TRUST COMPANY OF NEW YORK

vs.

SHEFFIELD AND BIRMINGHAM COAL, IRON AND RAILWAY COMPANY AND ANOTHER.

In re. Intervening Petition of Anniston Loan and [illegible]

ALABAMA IRON AND RAILWAY COMPANY, TRUSTEE, [illegible] COMPANY, NAPOLEON HILL, TRUSTEE, [illegible] HILL, TRUSTEE, Appellants,

vs.

ANNISTON LOAN AND TRUST COMPANY, [illegible]

Appeal from the Circuit Court of the United [illegible] Northern District of Alabama, [illegible] In Equity.

Statement of the Case, Assignment of Errors and [illegible] of Law Points of Equity [illegible] for Appellants.

S. W. Powell, Law Printer, [illegible]

In the United States Circuit Court of Appeals

For the Fifth Circuit. November Term, 1892.

No. 126.

CENTRAL TRUST COMPANY OF NEW YORK
vs.
SHEFFIELD AND BIRMINGHAM COAL, IRON AND RAILWAY COMPANY AND ANOTHER. } No. 150.

In re. Intervening Petition of Anniston Loan and Trust Co.

ALABAMA IRON AND RAILWAY COMPANY, TOWNLEY COAL AND COKE COMPANY, NAPOLEON HILL, TRUSTEE, AND JAMES C. NEELY, TRUSTEE, Appellants,

vs.

ANNISTON LOAN AND TRUST COMPANY, Appellee,

Appeal from the Circuit Court of the United States for the Northern District of Alabama, Northern Division.
In Equity.

Statement of the Case, Assignment of Errors, and Brief of Law Points of Henry B. Tompkins, Counsel for Appellants.

FIRST.

STATEMENT OF THE CASE.

1. On the 15th day of August, 1890, the Anniston Loan and Trust Co. filed its intervening petition claiming payment for five separate receiver's certificates, numbered 8, 9, 10, 11

and 12, issued on 10th day of October, 1889, by Jacob G. Chamberlain, late receiver of the Sheffield and Birmingham Coal, Iron and Railway Co. The intervention set forth that the receiver placed said certificates in the hands of Chas. D. Woodson for sale; that the said Woodson, on the 10th October, 1889, sold the same to one Duncan T. Parker, now deceased, for $5000 for each certificate; that the said Parker paid Woodson said price for the certificates. The same having been placed in Woodson's hands by the receiver to be negotiated and sold by Woodson, with only power and authority to act for and represent said receiver in the matter of the sale of said certificates.

That on the 2nd November, 1889, Duncan T. Parker sold and delivered the certificates for the sum of $5000 each to the petitioner, Anniston Loan and Trust Co.

Said petition further set forth, that it was the duty of Chamberlain to pay the semi-annual interest on said certificates, being $750.00 due on 10th April, 1890, at the National Park Bank of New York, and that said interest was not paid.

It is further stated in said petition that said receiver duly reported the sale of said certificates as made by said Chas. D. Woodson, such report being made to the Circuit Court of the United States, and that said proceeds had been placed by Woodson to the credit of said receiver in the First National Bank of Sheffield, less six per cent. commission for selling the same.

That on the 3d day of December, 1889, a decree was rendered by said Circuit Court of the United States foreclosing the mortgages and ordering a sale of the property, and that the purchasers be required to pay the receiver's certificates numbered as aforesaid, owned and held by petitioner.

On the 4th January, 1890, the said circuit court made an order modifying the former decree of 3d December, 1889, authorizing such purchasers of said properties at the fore-

closure sale to contest the validity of said certificates so sold by Woodson. And the said modified decree was made after Parker had purchased said certificates from the duly authorized agent of said receiver, in good faith for a valuable consideration, and had sold them to petitioner.

On the 21st April, 1890, said property was sold under said decree, and part of the same purchased by Napoleon Hill, trustee, and part by James C. Neely, trustee.

Petitioner then prays for relief, that the amount of said certificates be paid to it by the purchaser of said property, etc. (Transcript of Record, pp. 1 to 6.)

2. On the 30th September, 1890, demurrer was interposed to said intervention of Anniston Loan and Trust Co., on the nine grounds set forth in said demurrer. (Transcript, pp. 7 to 10.)

3. On the 25th October, 1890, an agreement was made between counsel, which was adopted by the court on 1st November, 1890, in an order setting down hearing before Judge Pardee in vacation. (Transcript, pages 10 and 11.)

4. On the 12th November, 1890, petitioner amended its intervention, setting forth more specifically the authority given to said Jacob G. Chamberlain, receiver, to issue said receiver's certificates, and stating that the action of Woodson was as the authorized agent of the receiver in selling ing said five certificates; and re-iterating in a great measure what had already been set forth in the original petition. (Transcript, pages 12 to 17.)

5. On the 2nd December, 1890, respondents renew their demurrers to the petition and amended petition. (Transcript, pages 17 and 18.)

6. On the 26th December, 1890, decree of Judge Pardee was filed in court overruling the demurrers. (Transcript, pages 19 to 22.

7. On the 31st January, 1891, respondents file their an-

swers to the intervention of Anniston Loan and Trust Co. substantially as follows: (Transcript pages 22 to 26.)

Denying that said Chamberlain, receiver, ever engaged Woodson, the president of the First National Bank of Sheffield, Alabama, to act as his agent in the negotiation and sale of said receiver's certificates. Petitioner had set forth that Woodson was the agent to negotiate the sale, not only of the five certificates hereinbefore referred to, but also of certificates for $5000 each numbered 1, 2 and 3, to which the intervenor made no claim and with which it had nothing to do. Respondents aver that certificates 1, 2 and 3 were sold to the First National Bank of Sheffield, Alabama, in discharge of a debt due said bank by the Sheffield and Birmingham Coal, Iron and Railway Co., under due and proper authority of the court. That as to the five certificates in litigation, Woodson disposed of the same without warrant or authority from Chamberlain, receiver, but contrary to the direct instructions and request of said receiver. That said certificates were not disposed of by Woodson, as alleged in the intervention, on the 10th October, 1889, to one Duncan T. Parker, or anyone else, nor were they disposed of for the sum of $5000 each; and respondents aver that said five certificates were not disposed of by Woodson until after the 13th October, 1889, and that they were then sold, or otherwise disposed of by Woodson, without authority and against the express instructions of receiver, to some person or persons unknown to respondents, and for a price not greater than seventy-five cents on the dollar. Respondents also call for strict proof that said Duncan T. Parker, or anyone in his behalf, ever paid to Chas. D. Woodson $5000 for each of said certificates. And respondents aver that if the said Parker ever bought the certificates at all from said Woodson, that they were bought for a less sum than they were directed by the court to be sold for; and that the purchase of the same was against

the order of the court and against the instructions of the receiver. Respondents further allege that the price paid for said certificates by said Parker, whatever the price may have been, was never turned over or transferred by Parker, or any one for him, to said Woodson nor to said Chamberlain, as receiver.

Respondents aver that they were not informed as to what said Parker may have done with said certificates; but deny the statement set forth in paragraph 3 of petition of Anniston Loan and Trust Co., wherein it is stated that Parker sold and transferred said certificates to the intervenor for $5000 each.

Respondents also deny each and every statement and allegation made in paragraph 4 of the intervention stating that it was the duty of Chamberlain to pay the interest upon said certificates.

Respondents also deny every allegation of paragraph 5 of the intervention, wherein it was stated that said Chamberlain reported the sale of said certificates, Nos. 1, 2 and 3, and also Nos. 8, 9, 10, 11 and 12, for him by said Woodson, and the proceeds placed to his credit in the First National Bank of Sheffield. Respondents admit, however, that said Chamberlain did report to the court that the proceeds of the five certificates in litigation had been placed by Woodson to the receiver's credit in the First National Bank of Sheffield, less commission for selling same. But respondents aver and show to the court that such statement made by said receiver was made through misinformation, and brought about by misrepresentation and misconduct of said Woodson. And that said receiver proceeded to correct said statement in said report so soon as he became aware of the error into which he had been led.

Respondents admit that a decree had been taken on the 3d December, 1889, as alleged in the intervention, and that it was ordered in said decree that the purchaser of the property

should pay for said certificates in addition to the amount bid at the sale of the property. Respondents further admit that the court did on the 4th day of January, 1890, make another decree modifying and changing the one of December 3d, 1889, so as to authorize the purchaser of the property to test the validity of the said five certificates. And respondents further proceeded and denied that Woodson was the agent for the receiver, or that his sale of the said certificates was binding upon the purchaser of the property. Respondents also deny that said Parker made a sale of said five certificates to the intervenor for a valuable consideration; but aver that even if such sale was a fact it did not make legal and valid the sale of said certificates by said Woodson. Respondents also admit the sale of the mortgaged property on the 21st April, 1890, under the decree as modified authorizing the purchaser of the property to contest the validity of the five certificates.

In answer to the amended petition substantially the same admissions and denials were made as in the answer to the original petition of intervenor. (Transcript, pages 25 to 26.)

8. On the 6th March, 1891, an order was entered by consent referring the cause to David D. Shelby, Esq., special master; and after Mr. Shelby had taken a great deal of testimony, but before he had made any report, he asked to be relieved from further consideration of the cause.

9. On the 19th January, 1892, counsel filed an agreement, which was made the order of the court, substituting Milton Humes, Esq., as special master in the place of David D. Shelby. (Transcript, page 31.)

10. On 18th January, 1892, an amended petition was filed; and on the 19th January, 1892, intervenor filed another amendment making the Alabama Iron and Railway Co. and the Townley Coal and Coke Co. the real party-respondents in this cause. (Transcript, pages 28 to 30.)

11. On the 19th January, 1892, respondents filed their

answer to the amended petition of intervenor. In this answer respondents set forth that one of the mortgages called in question, and introduced by intervenor, given by Chas. D. Woodson to Jacob G. Chamberlain, as receiver, on property situated at Sheffield, Alabama, had been duly foreclosed on 3d December, 1890, and had been cancelled. That the other mortgage called in question by the intervenor, given by Woodson to Chamberlain, receiver, upon block 209, in the City of Birmingham, Alabama, had not been foreclosed and could not be, as property was at the date of said mortgage subject to a vendor's lien for over $32,000; and that since the giving of said mortgage on the 26th October, 1889, said vendor's lien had been foreclosed and the property sold for a sum greatly less than was sufficient to satisfy said lien. To which amended answer so filed on the 19th January, 1892, respondents attach an exact copy of said mortgage given by Woodson to Chamberlain, receiver; and also copy of the proceedings foreclosing the same for said vendor's lien.

Respondents also attach to said answer of 19th January, 1892, marked "Exhibit C," a copy of the foreclosure proceedings made by Jacob G. Chamberlain upon the property situated in Sheffield, Alabama, and mortgaged by Chas. D. Woodson on the 9th day of November, 1889; which said papers, attached as "Exhibits A, B and C" to said answer, are certified to be true and correct copies by Nathan A. Brown, a notary public in and for the County of Fulton and State of Georgia; and the originals of which papers will be submitted for inspection of the special master, if desired. (Transcript of Record, pages 35 to 39.)

12. On the 19th January, 1892, counsel for respondents file a motion to exclude certain evidence which had been offered before David D. Shelby, Esq., before Milton Humes, Esq., special master. (Transcript, pages 32 and 33.)

13. On the 19th January, 1892, consent order was taken

before the court authorizing the circuit judge in vacation, with ten days notice to opposite party, to hear such exceptions to the report of the master as might herein be filed. (Transcript of Record, p. 34.)

14. The case as heard before the master and by Judge McCormick was upon the foregoing pleadings. When the transcript was being made up, certain objections were made and filed by John B. Knox, Esq., (see Transcript, pages 39 and 40) to the admissibility of the transcript offered by counsel for the respondents in support of their answer to the amended petition of intervenor filed on 18th and 19th January, 1892. This answer was also filed on 19th January, 1892. (Transcript, pages 35 to 39.)

The papers offered as "Exhibits A, B and C" to, and in support of, the said amended answer of the respondents, appellants in this cause, are found in Transcript of Record, pages 41 to 73.

Their object is to show:

a. That the Birmingham lot mortgaged by Woodson to Chamberlain, receiver, did not belong to Woodson; but that it was taken under a foreclosure of vendor's lien, and that Chamberlain realized nothing for it. (Transcript, pages 41 to 54.)

b. That the property at Sheffield mortgaged by Woodson to Chamberlain realized to Chamberlain only $3600. (Transcript of Record, pages 63 to 72.)

c. That the amount due by Woodson to Chamberlain, receiver, was largely in excess of what the five certificates were sold for by Woodson, $17,500.00, and largely in excess of the par value of said certificates, $25,000.00. The debt due from Woodson to the receiver being $33,335.00. (Transcript of Record, pages 59 and 63.) The sale made of them by Woodson was for $17,000 or $17,500. (Transcript of Record, page 109, Garth's deposition.)

d. That the sum found due to receiver by First National Bank of Sheffield, of which Woodson was president, was $7305.29, (Transcript of Record, page 69) and which sum was credited with $3600, the amonnt realized from the sale of Woodson's Sheffield property. (Transcript, pages 71, 141.) This appropriation of payment of $3600 to debt due by the bank to Chamberlain, receiver, was legal and proper, as this bank had received benefit of $10,000 derived by Woodson from illegal sale of two certain acceptances, besides the five certificates which Woodson was ordered not to sell. [Transcript, pages 166, 170, 136.]

15. As a very material part of what should go in the statement of the case, counsel for respondents respectfully refers the court to the very able and elaborate, and what is deemed conclusive, report of the special master, Milton Humes, Esq., to be found in Transcript of Record, pages 73 et seq. In this report the master states all the pleadings and testimony upon which the case was submitted to him. The findings of fact made by the master were in no single instance controverted as being improper, so far as to state that the findings were not just what they ought to have been upon consideration of the testimony adduced before the master. The objections to the findings of the master were that he considered testimony that ought not to have been considered, for certain technical reasons stated in the exceptions to the report. These exceptions to the report of the master are found in Transcript of Record, pages 98, 99 and 100, and a careful consideration of them shows that the controling object and desire of counsel for intervenor was to rule out and to keep from being considered by the master or the court the persuasive and conclusive proofs that the authority of Woodson to sell the five certificates was absolutely revoked the day before he made the sale.

SECOND.

ASSIGNMENTS OF ERROR.

Counsel for respondents assigns the following grounds of error as committed by the Honorable A. P. McCormick, in his decree overruling the findings of the special master, in Transcript of Record, pages 102, 103 and 104:

1. Because the court erred in overruling the report of the special master, Milton Humes, Esq., finding in favor respondents and against Anniston Loan and Trust Company, as set forth on pages 73 to 97 inclusive of Transcript of Record.

2. Because the court erred in not finding and decreeing that said report of said special master should stand and be confirmed in all respects.

3. Because the court erred in not finding and decreeing that the respondents, Alabama Iron and Railway Co. and Townley Coal and Coke Co., were not indebted in any sum whatever to the Anniston Loan and Trust Co. upon the pleadings and proofs introduced in the cause.

4. Because the court erred in not finding and decreeing that the five certificates, each for $5000, sold by Charles D. Woodson to H. E. Garth, and which were the foundation of the suit of the Anniston Loan and Trust Company, were negotiated without any authority from the receiver, Jacob G. Chamberlain, and were null and void in the hands of the original purchaser and in the hands of said Anniston Loan and Trust Company.

5. Because the court erred in not finding and decreeing that there was no cause of action under the pleadings and proofs in favor of Anniston Loan and Trust Company against respondents, and in not dismissing the said intervening petition of said Anniston Loan and Trust Company.

6. Because the court erred in not ruling out and refusing to consider all the evidence introduced before the special master except

[a] That shown in depositions of Jacob G. Chamberlain.

[b] That shown in the depositions of J. B. Carrington.

[c] That shown in the depositions of H. E. Garth.

[d] That shown in the depositions of Henry B. Tompkins. And only such portions of said four depositions, and the writings and exhibits thereto annexed, that go to show that Charles D. Woodson sold said five certificates at 70 cents on the dollar, or for $17,000; and made said sale without any authority and after the receiver had given notice not to sell said certificates at all.

[e] The order of court authorizing the issue and sale of receiver's certificates wherein is set forth and conditions under which the same was to be made.

7. Because the court erred in not dismissing the said intervening petition of said Anniston Loan and Trust Company, upon the ground that the court erred in overruling the demurrers and amended demurrers to said petition, as set forth in Transcript of Record, pages 7 to 9, and pages 17 and 18.

THIRD.

BRIEF OF LAW POINTS.

1. It is insisted by respondents that a great mass of testimony introduced before the special master by the Anniston Loan and Trust Co., and a great part of that introduced by respondents in rebuttal thereof, should all be ruled out, as requested by respondents in their formal written motion filed in the cause on the 19th January, 1892. (Transcript, pages 32 and 33.) And that the only part of the testimony proper to be considered is that bearing directly upon the question as to whether or no, [a] C. D. Woodson had authority to dispose of the five receiver's certificates at the time he

did; and [b] whether or no, even if he did have such authority, the money derived from the certificates was paid into the hands of the receiver.

If Woodson did not have such authority, then the finding should be against the intervenor without reference to anything that was done between Woodson and the receiver, or the receiver and the First National Bank of Sheffield, subsequent to the sale by Woodson. And this because such things were *res inter alia acta.* For, if by reason of want of authority in Woodson to sell certificates, even at par, he having actually sold them at 70 cents on the dollar, the purchaser gained no title at the time of the sale. on or about the 14th October, 1889, then Anniston Loan and Trust Co., claiming under such purchaser, has no standing in court.

Again, if Woodson's authority had been perfect, so far as it could be made legal, and he had sold the certificates at par, less a reasonable commission, in conformity with the order of court, then the intervenor could not recover, because it is conclusively shown that Woodson never did pay over to the receiver any part of the purchase money.

2. It is clearly established by the proofs that Woodson also sold two acceptances, aggregating about $10,000, which belonged to the receiver, and which the receiver shows were placed in the hands of Woodson, as president of the bank, in the usual course of business between the receiver and the bank, to be collected when they were due. This amount, therefore, became a debt of the bank, and anything that has been realized from the sale of Woodson's property under foreclosure of mortgage given by him to secure this debt due by the bank to the receiver, should be credited upon the amounts realized from these acceptances, and not upon any amount realized by Woodson, even if he was the agent of the receiver for the sale of the certificates. The bank, as shown

by the foreclosure proceedings of the mortgage on the Sheffield property, has been duly credited with the amount for which that property sold, and still a considerable balance is left unpaid to the receiver from the bank.

It is unnecessary, however, to consider these last referred to questions if the position of counsel for respondents is correct, that the court should go no further than the ascertainment as to whether or no Woodson was authorized to sell the certificates; or whether, if authorized and having sold them, he paid over the money realized from the certificates to the receiver.

3. There can be no subrogation in this case in any of its aspects.

4. As to the law bearing upon the legal questions involved in this controversy and relating to receiver's certificates, counsel for respondents refer the court to the following authorities:

Beach on Receivers, Sec. 396, 397, 398 and 399.

It is to be noted that at the time of the foreclosure sale in April, 1890, a modified decree had been made in January, before selling the property subject only to $125,000 of receiver's certificates, and leaving the question to be contested as to the $25,000 now in suit.

See also, authorities cited and referred to in Beach on Receivers, under sections already quoted.

The case of Union Trust Co. vs. Chicago, &c., R. R., in 7 Federal Reporter, is exactly in point, even if it be considered that Woodson was the duly authorized agent of the receiver

at the time the certifiicates were sold, and the attention of the court is especially called to that case.

See also, Stanton vs. Alabama & Chattanooga R. R., 2 Wood's C. C. Reports, 506;

Union Trust Co. vs. Illinois Midland, 116 U. S., 461;

Meyer vs. Johnson, 53 Alabama, 348.

5. It was admitted by counsel for Anniston Loan & Trust Co., in argument upon the demurrer, that receiver's certificates are not commercial paper or negotiable instruments, and that the purchaser of receiver's certificates was bound to see that the proceeds went into the hands of the receiver. Of course it is not contended by counsel for respondents that purchasers in good faith for valuable consideration of receiver's certificates, in conformity with an order of court, from an authorized agent or from the receiver himself, would be bound to see to their appropriation by the receiver. But a purchaser from a special agent of receiver's certificates is bound to know that the person representing himself as agent was in reality such; and if no agency exists at the time of the sale, as is conclusively shown in this case, no title to the certificates ever passes to the purchaser.

American and English Encp. of Law, Vol. 1, p. 351–352;

Fisher vs. Campbell, 9 Post. (Ala.) 210;

Powell vs. Henry, 27 Ala., 612;

Schimmelpennich vs. Bayard, 1 Pet. (U. S.) 264;

Parsons vs. Armor, 3 Pet. (U. S.) 413–428.

6. Special attention is called to the depositions of H. E. Garth, taken by the intervenor; and to the supplemental depositions of Henry B. Tompkins, where reference is made to these depositions of Garth. It is shown that Garth acted as a broker for Parker in the purchase of certificates from Woodson, and bought them at seventy cents on the dollar after Woodson's authority had been revoked by Chamberlain. It is further shown that Garth had been put in full possession by Tompkins of every fact connected with the issue of these certificates and copies of the order of court, and of the certificates themselves has been given to Garth before he made the purchase as the agent of Parker. Garth knew that the court had not authorized certificates to be sold for less than par, with a reasonable commission, which fact was set forth in the order of court, and which order of court is referred to on the face of the certificates themselves.

7. The case is stronger, even, in favor of respondents than if Garth, as agent and broker of Parker, had bought an over due promissory note from Woodson, given by the receiver or by some other person, and payable to bearer, for there it would only be a question of equities existing between the payer and payee of the note at the time of the sale; but here the purchaser of the certificates was bound under the law to see that the price paid went into the possession of the receiver.

The case of Stanton vs. Alabama, etc., R. R., which is a branch of the case heretofore referred to in Wood's C. C. Reports, and to be found at page 585 of 31 Federal Reporter, is especially instructive. It is there held, that where a receiver appointed by the court issues certificates and uses and disposes of same in a manner not in accordance with the order of the court the certificates are invalid and of no effect. This being law, the certificates now in suit could not be recovered

upon, even if the receiver had not promptly disavowed the action of Woodson so soon as he found out that the certificates were not sold in accordance with the order of court, and that Woodson had deceived him in stating that he had placed the proceeds to the receiver's credit in the First National Bank of Sheffield. It is also stated in this decision in 31 Federal Reporter, on page 587: "Certificates are not commercial paper, good in the hands of bona fide holders, no matter what vice or infirmity might attend their original issue. They are good for the amount of money actually paid for or loaned on them to the receivers, in accordance with the terms of the order of the court." "The proof shows no money was paid for these certificates, or loaned or advanced to the receivers on them."

8. As bearing upon the question that purchasers of receiver's certificates, before they can get a title, must conform strictly to the orders of court under which they are issued, see 42 Fed. Reporter, 372; Fidelity Ins. Co. vs. Shenandoah Iron Co.

And also see

35 Fed. Rep., 436, 7th Nat'l Bank vs. Shenandoah I. Co., and

High on Receivers, sec. 393, d.

HENRY B. TOMPKINS,
Counsel for Appellants.

Alabama [illegible]

Tuscaloosa Coal & Coke [illegible]

Hazlehurst Ellis, [illegible]

James G. Merrill, [illegible]

Appellants,

vs.

Anniston Loan & Trust Co[illegible]

Appellee.

Application by Appellants for writ of [illegible] from Supreme Court of the [illegible] the Circuit Court of [illegible] Circuit, to recall the [illegible] above entitled cause [illegible]

Brief and Argument of [illegible] of said Motion.

ALABAMA IRON & RAILWAY COMPANY,
TOWNLY COAL & COKE COMPANY,
NAPOLEON HILL, Trustee,
JAMES C. NEELY, Trustee,
Appellants,
vs.
ANNISTON LOAN & TRUST COMPANY,
Appellee.

No. 126.

Application by Appellants for writ of Certiorari from Supreme Court of the United States to the Circuit Court of Appeals for the Fifth Circuit, to certify the Record in the above entitled cause to said Court.

Brief and Argument of John B. Knox, for Appellee, in opposition to said Application.

STATEMENT OF CASE.

On January 9th, 1889, the Central Trust Company of New York filed its original bill in the Circuit Court of the United States for the Northern District and Division of Alabama, against the Sheffield & Birmingham Coal, Iron & Railway Company, to foreclose two mortgages executed by said Company, one executed on the second of January, 1888, to secure its first mortgage bonds for one million ($1,000,-

000) dollars, and another executed June first, 1888, to secure its second mortgage bonds amounting to four hundred thousand ($400,000) dollars, and in said suit Jacob G. Chamberlain was appointed receiver. The jurisdiction of the Federal Court was invoked and obtained on the ground that the complainant was a corporation under the laws of the State of New York, and defendant a corporation under the laws of Alabama. Said Jacob G. Chamberlain filed his petition in said Court for the issuance of receiver's certificates and a decree was entered in said cause authorizing the receiver to issue and sell receiver's certificates amounting to one hundred and fifty thousand ($150-000) dollars of the denomination of one thousand ($1,000) dollars each. Twenty-five of these certificates of the par value of twenty-five thousand ($25,-000) dollars, were placed by the receiver in the hands of C. D. Woodson for sale, and by him sold to Duncan T. Parker in the city of New York. The Anniston Loan & Trust Company purchased the certificates from the said Parker, paying therefor the sum of twenty-two thousand and five hundred ($22,500) dollars. On December 3rd, 1889, the final decree of foreclosure was entered in said cause, and by the terms of said decree, *the purchaser at the foreclosure sale was required to pay the certificates in controversy*, as well as the other certificates which had been issued and sold to other parties. After the adjournment of the court and in vacation, upon application, the circuit judge entered an order purporting to modify the decree of foreclosure so far as to authorize the purchaser at the foreclosure sale to contest the validity of the certificates. Payment of the certificates and interest thereon being refused, the Anniston Loan & Trust Company filed its petition and intervention in said original cause by leave of the court, on the 15th of August, 1890, to enforce the payment thereof. In said petition and amendments thereto the Sheffield & Birmingham Coal, Iron & Railway Company, de-

fendant in the original cause, Napoleon Hill, trustee, James C. Neely, trustee, the Alabama Iron & Railway Company and the Townly Coal & Coke Company, purchasers at foreclosure sale, and Jacob G. Chamberlain, receiver, were made parties respondent. All of the respondents appeared and demurred to the petition and the demurrer was over-ruled by the circuit judge, the Hon. Don A. Pardee, to which ruling no assignment of error was made in the Court of Appeals. Thereupon all of the respondents answered the petition and an order of reference was entered to the Hon. Milton Humes to take evidence, investigate and report. On the filing of his report and upon the exceptions thereto, a decree was entered by the circuit judge, the Hon. A. P. McCormick, correcting the report of the special master, and sustaining the validity of said certificates. Afterwards the respondents appealed said cause to the Circuit Court of Appeals for the fifth circuit, where the decree of the circuit judge was in all things affirmed. They now make application to the Supreme Court of the United States for a writ of certiorari requiring said court to certify said record to this court.

NOT A PROPER CASE FOR WRIT OF CERTIORARI.

(1) Although this court may have the power and jurisdiction by writ of certiorari to require the Circuit Court of Appeals to certify cases, where the decree of the latter is final and no other provision for appeal or writ of error is made, yet this court will only exercise such jurisdiction in cases of gravity and importance, and for the purposes of securing uniformity of decision—Lau Ow Bew, petitioner, 141 U. S. Rep. 583; In Re Woods, petitioner, 143 U. S. Rep. 202; Lau Ow Bew vs. United States 144 U. S. Rep. 47; Chicago & Northwestern Railway Company vs. Osborne 146 U. S. Rep. 354. *

Cases of *gravity* and *importance* as defined by the

* and see to same effect Louisville Trust Co vs Jacksonville Railway Co 148 U.S. 672 and Fahn Petitioner 140 1287 Oct Rem 1892

court in the decisions referred to does not mean cases involving large amounts of money or presenting complicated issues of fact or complex questions of law of difficult solution. If such were the rule the whole purpose intended to be accomplished by the creation of the Court of Appeals, which was to relieve this court of the burden of deciding such questions, would be defeated. The jurisdiction of this court by appeal and writ of error is preserved by the terms of the statute in cases involving questions of jurisdiction of the lower court, or of the construction or application of the constitution of the United States, or the validity of the laws or treaties of the United States. This creates an immense volume of business which the court is required to consider, and in enforcing the policy of the act of March 3rd, 1891, establishing the Circuit Court of Appeals for the relief of this court, it will not extend a writ of certiorari except to cases involving questions of general and public importance, in order to secure uniformity of decision. This is well illustrated by In Re Woods, petitioner, (143 U. S. Rep. 202) where the court declined to issue a writ of certiorari, holding that the questions (1) whether it is settled law in the State of Minnesota that a judgment of dismissal in a former suit, such as was pleaded in that case, was not a bar to second suit on the same cause of action, and (2) whether the law in respect of a recovery by a servant against his master for injuries received in the course of his employment was properly applied on the trial of that case do not fall within the category of questions of such gravity and general importance as to require a review of the conclusions of the Circuit Court of Appeals in reference to them. In delivering the opinion of the court in this case, Mr. Chief Justice Fuller says: "This must necessarily be so in any view, and especially when it is con-

sidered that the Circuit Court of Appeals was created for the purpose of relieving this court of the oppressive burden of general litigation, which impeded the examination and disposition of cases of public concern, and delayed suitors in the pursuit of justice. But in the interest of jurisprudence and uniformity of decision, to use the language of the eminent jurist and statesman who had charge of the bill, provision was made under section six for such supervision on our part as would tend to avert diversity of judgments and guard against inadvertence of conclusion in controversies involving weighty and serious matters."

And again, this court in the case of the Chicago & Northwestern Railway Company vs. Osborne (146 U. S. Rep. 354) made a similar ruling and denied a writ of certiorari in a case which arose under the Interstate Commerce Act. to recover alleged overcharges on a car of corn, and where, as was claimed, there was manifest error in the decision of the Court of Appeals.

In such cases, the court does not and will not exercise its jurisdiction, and issue a writ of certiorari, merely because the Court of Appeals may have decided the case contrary to its merits, either as to the law or the facts. If thus controlled, it would be forced to examine the merits of every case submitted to it, for otherwise, if it examined some and not all, it might administer justice to some suitors and deny it to others, whose claims were equally meritorious; hence it is too plain for argument, and in fact it has been decided by this court in the cases referred to construing section six of the Act of March 3rd, 1891, creating the Court of Appeals, that it will only grant a writ of certiorari in cases of general and public importance, where the uniformity of decision is involved.

And hence, in the matter of Lau Ow Bew,

petitioner, (141 U. S. Rep. 583) where the right of a citizen of a foreign country, domiciled here and engaged in the mercantile business for seventeen years, and who went abroad for business or pleasure with the intention of returning, and was not permitted to land but held in custody by the Federal authorities, was inolved, it was held by this court, that a question of such gravity and importance was presented, as that the writ of certiorari should issue. Mr. Chief Justice Fuller, speaking for the court in this case, says: "Manifestly the question whether this section should be construed, taken with the treaties, to apply to Chinese merchants already domiciled in the United States and to whom no intention of voluntarily surrendering that domicil can be imputed, is one of great gravity and importance. The status of domicil in respect of natives of one country domiciled in another is a matter of international concern, and the acts of Congress are to be considered, in view of general and settled principles upon that subject, in arriving at a conclusion as to the operation upon the treaties with China, designed by Congress in those enactments. Was it intended that commercial domicil should be forfeited by temporary absence at the domicil of origin, and to subject resident merchants to loss of rights guaranteed by treaty if they fail to produce from the domicil of origin that evidence which residence in the the domicil of choice may have rendered it difficult, if not impossible, to obtain? We refrain from particular examination of the point involved, and refer to it only so far as necessary to indicate its importance."

The case at bar involves no such question. It presents a simple question upon the law of civil contracts and the familiar doctrine of estoppel. A receiver appointed by the court to administer assests

in the hands of the court made a contract by which he secured an advance of money by the issuance and sale of receiver's certificates authorized by the orders of the court; the same court which issued the certificates entered a decree requiring them to be paid; the Court of Appeals affirmed this decision, and while it certainly is a question of gravity and importance to the unfortunate purchaser of these certificates, who has paid twenty-two thousand, five hundred dollars for them, whether it is tolose it or not, and it may be a question of gravity and importance to the defendant or the purchaser at the foreclosuresale, charged with the duty of paying these certificates, whether it shall pay them or not,—it is not clear to me in what way the question is one of *general or public importance!*

THE CASE CONSIDERED UPON ITS MERITS.

(2) But suppose the case be considered upon its merits, if this court holds such to be the proper practice, if the decision of the Court of Appeals upon the facts or upon the rules of law controlling in such cases was clearly right, and it is so made to appear upon an inspection of the record, this court, it is believed, will not issue a writ of certiorari.

Upon one point alone, which will be seen by a mere reference to the record without regard to other questions involved, the court will see that the decree of the Court of Appeals upon the law as applied to the facts of the case, was clearly right. The final decree of foreclosure of December 3rd, 1889, in the principle cause in which the receiver's certificates in controversy were issued, and under which the Appellants purchased the property against which a lien is established, disinctly required *that the purchaser at the foreclosure sale should pay these certificates.* [See printed record pp. 207 and 215]. This being true, as was expressly decided by this Court in Swan vs. Wrights executor's (110 U. S.

Rep. 590) a purchaser under such a decree of foreclosure, charged with the duty of paying said certificates, cannot deny liability to pay them, even though he may show they were fraudulently issued!

But it is attempted to be shown that this decree of foreclosure was afterwards modified so as to permit the purchaser to contest the validity of said certificates. But this alleged decree modifying the decree of foreclosure of December 3rd, 1889, as is shown by the record, was made by the circuit judge in vacation after the adjournment of the court and the enrollment of the decree, and without notice to holders or owners of the certificates. (See record pp. 101, 102, 216 and 225). This being true, as was expressly decided in the case of the Trust Company vs. Grant Locomotive Works, (135 U. S. Rep. 207), the decree attempting to modify the decree of foreclosure is void for want of jurisdiction and the original decree of foreclosure is in full force and effect. A similar decision upon a similar state of facts was also reached by Mr. Justice Harlan in the case of Morgan's Louisiana and T. R. & S. S. Co., vs. Texas Central Railway Co., 32 Fed. Rep. 525.

It is suggested by opposing counsel that the purchaser of these certificates was not a party in the principal cause No. 150 of the Central Trust Company vs. the Sheffield & Birmingham Coal, Iron & Railway Company, and hence, not entitled to notice of any proceedings had in that case. The answer to this is, that the purchaser and owner of the certificates who had contracted in good faith with the receiver of the court, was entitled to notice of any decree, the effect and purpose of which was to deprive him of any valuable right. The rights of the owner of these certificates were fixed by the decree of December 3rd, 1889, if the authorities of the cases of Swan vs. Wright's, Exrs. (110 U. S. 590) and the Trust Company vs. Grant Locomotive Works (135 U. S.

Rep. 207) are to be respected. What interest did the Central Trust Company, or the Sheffield & Birmingham Coal Iron & Railway Company, or C. D. Woodson himself, have in the protecting before court the rights of the purchasers of these certificates! These persons might well have consented to a decree by the court declaring the certificates invalid since such a decree could prejudice no right of theirs, while it might ruin the unfortunate purchasers! It would seem, therefore, that the court would make no decree in such a case without notifying the holder of the certificates. Koontz vs. Northern Bank 16 Wall U. S. 196.

Counsel cannot excuse themselves from giving notice to the purchaser of these certificates, merely because his name and residence was unknown; whether known or unknown his rights could not be modified, restricted or taken away, unless he was properly before the court, and notice to some other person would by no means be equivalent to notice to him.

Again, it is suggested by opposing counsel, that the parties in the principal cause, No. 150 of the Central Trust Company vs. the Sheffield & Birmingham Coal, Iron & Railway Company consented that the Circuit Judge might, in vacation, make the order modifying and vacating the final decree of foreclosure of December3rd, 1889, so far as the same required the payment of the twenty-five thousand dollars of the receiver's certificates held and owned by the intervenor. But the answer to this is, that consent in such a case as this cannot give jurisdiction. The circuit judge was without power or authority to make such an order and the consent of the parties was wholly ineffective to give validity thereto. And this is true, even though the purchaser had joined or united in the consent. The case of Germond vs. the People (1 Hill N. Y. 343) is in point to this effect. Mr. Jus-

tice Cowen says: "If this defect was not cured by consent, most clearly the whole was void and may be impeached collaterally, as was held in 3 Keb. 362 (case 42) in debt for an amercement assessed in a court leet by less than the legal number of jurors. But consent will not give jurisdiction; and the rule applies as well to consent which creates a tribunal, as to that which submits a subject matter to a subsisting tribunal which is an utter stranger to it."

The authorities are numerous and uniform to this effect. 12 Am. Eng. Enc. of Law 310 (b.c.); Cooley's Constitutional Limitations 398. The learnnd author last cited says: "On this point there is an important maxim of the law; that is to say, that consent will not confer jurisdiction; by which is meant that the consent of parties cannot empower a court to act upon subjects which are not submitted to its judgment by the law. The law creates courts, and with reference to considerations of general public policy, defines and limits their jurisdiction; and this can neither be enlarged nor restricted by the acts of the parties."

But without regard to this question and conceding the validity of the decree made by the Circuit Judge in vacation purporting to modify a final decree of foreclosure of December 3rd, 1889, a careful examination of the evidence in the case and the rules of law applicable thereto, it is believed, will convince this court, as it did the learned Circuit Judge, and the able Court of Appeals, that the owner of the receiver's certificates in controversy is entitled to payment at the hands of purchaser at foreclosure sale. The alleged order of modification provided only that the purchaser at foreclosure sale might contest the validity of these certificates. When the issues were made up and the evidence taken and fully heard and considered by the same circuit court which authorized their issuance, it was ruled by the

learned circuit judge, who decided the case, that the Anniston Loan & Trust Company, who, in good faith had purchased the certificates, was entitled to payment. The evidence conclusively shows that the receiver had authority to issue and sell the certificates in controversy, in person or by agent; that he placed the certificates in the hands of C. D. Woodson who sold them to D. T. Parker, who, in turn sold them to the Anniston Loan & Trust Company, the present owner, for twenty-two thousand, five hundred dollars; when advised of the sale, the receiver fully ratified and confirmed the same, allowing the proceeds thereof, amounting to twenty-two thousand, five hundred dollars coming to him, to be deposited to his credit in the First National Bank of Sheffield, Alabama; that the receiver afterwards reported to the court that the proceeds of the sale of these certificates were deposited to his credit in said bank; that afterwards becoming doubtful as to the solvency of said bank, and on account of his intimate and friendly relation with the president thereof, he required and received ample security for said deposit, aggregating forty-seven thousand, five hundred dollars, and although the bank subsequently failed, he announced after the failure that he was fully protected in his deposit by independent security; it is further shown that the court after the failure of the bank, by consent of all parties, entered a decree of foreclosure in the principal cause requiring the certificates in controversy to be paid, and long afterwards the receiver filed with the receiver of the bank his claim for the full amount of his deposit with the bank, and in pursuance of the orders and decrees of the court transferred and assigned the mortgages and collaterals given to secure his deposit with the bank, to the purchasers at the foreclosure sale, who now hold and own them. If by his accepting credit upon the books of the

bank, in view of its subsequent failure, any loss should fall upon the trust estate, which the evidence shows is altogether unlikely to occur, it is a matter between the receiver and the trust estate, upon his official bond. Besides, the purchaser at the foreclosure sale who was charged by the final decree of foreclosure with the duty of paying these certificates, has obtained from the receiver an assignment of all the collaterals held by him as security for said deposit in said bank, made in pursuance of the orders and decrees of said court, and still holds and owns them. Under these circumstances to hold that the receiver or the trust estate, or the purchaser at the foreclosure sale, may retain all the benefits of this transaction and the proceeds of the sale of the certificates and still repudiate the certificates in the hands of the *bona fide* holder, would, it is submitted, be contrary to all principles of equity. Koontz vs. Northern Bank, 16 Wall. 496; Wabash etc. Rwy. Co. vs. Cen. Trust Co., 22 Fed. Rep. 269; Central Trust Co. vs. Ohio Rwy. Co., 23 Am. & Eng. Rwy. Cos. 666.

It seems to me the correct rule is stated by the learned circuit judge in forcible terms, which are adopted and approved by the Court of Appeals, where he says: "Grant that the receiver is only the hand of the court, the court's bailiff, or to use a term of more definite signification, the court's agent, can this agent so act that if a principal he would be estopped, and the court receive such information of his acts and take such action on his reports of his acts, that any other principal similarly charged would be estopped from refusing to protect the party dealt with, and yet the court itself refuse or decline to afford and enforce such protection? It seems to me that to so hold would not only embarrass the course of such proceedings in equity, but bring discredit on the temple. The courts will not consent to the ensnaring of purchasers who, in good faith,

invest their means in this class of securities. In this case the issue and sale of the certificates were authorized by the proper decree of the court. The receiver acted in perfect good faith in accepting a credit on his deposit account with the Sheffield Bank, known by him at the time to be embarrassed but still doing business, and continuing in business with open doors for more than a month after the acceptance of said credit. On account of his knowledge of the strained condition of the bank, he demanded and received from the president of the bank valuable securities to protect this deposit; he reported the sale of these certificates to the court with the statement that the proceeds were to his credit, as receiver, with the bank; the corpus of the property in the hands of the receiver was ordered sold to pay costs, the whole issue of receiver's certificates, including these and the mortgage debts; this decree was afterwards so modified as to permit the validity of the certificates to be further inquired into; the property was sold, subject to all valid charges, and was, with the securities, taken by the receiver from the president of the bank, transferred to the purchasers at this sale, and it is my judgment that both the receiver and the purchasers are estopped, and that a court of equity cannot put this loss—if there is to be a loss, which is by no means clear to mind—on the *bona fide* purchaser and holder of said certificates; that the decision of the special master must be set aside, and the intervenor have judgment for the full amount of the principal of said certificates and of the interest thereon, according to their terms, to the 22d day of November, 1892, the day this hearing was had, with lawful interest thereon until paid." (See Record, p. 103.)

I beg leave to submit as a part of the argument on this motion a copy of the printed brief used before the Court of Appeals, where the evidence and the